

The Contractor "MUST ACHIEVE" a 100% servicing and testing of the heating system within each 12 month period to every individual property shown in the schedule

## SCHEDULE 1

### GENERAL PARTICULARS, PRELIMINARIES & CONDITIONS OF CONTRACT

Term Contract (including emergency call out)

for

General housing gas servicing and maintenance

and

Sheltered Housing Unit large scale boiler servicing and maintenance

## **Heating Maintenance and Annual Servicing Contract** **General Particulars, Preliminaries & Conditions of Contract**

### **CONTRACT OBJECTIVE**

**The contractor is responsible for the testing and maintenance of all Tendring District Councils gas appliances and flues within the designated Contract Area, to ensure that 100% gas safety tests are achieved within the statutory 12 month period. The contractor shall be responsible for maintaining and keeping a record of all tests and inspections.**

### **CONTRACT AREA 1 South**

The Contract Area 1 of Tendring District Council peninsula for this contract covers properties in the districts of Brightlingsea 140 No., Clacton-on-sea 769 No., Frinton-on-sea 22 No., Great Bentley 53 No., Gt. Holland 12 No., Holland-on-sea 23 No., Kirby Cross 48 No., Kirby-le-Soken 4 No., Lt. Bromley 4 No., Lt. Clacton 11 No., St Osyth 46 No., Thorpe-le-Soken 20 No., Thorrington 4 No., Walton-on-naze 110 No.

The Contract Area 1 also includes 5no. buildings comprising sheltered housing unit accommodation.

The number of properties are approximate for the guidance of tendering only, a full list will be provided to the successful contractor.

### **Extent of the Works**

The works shall comprise a maintenance contract including the servicing and repairs of centralised gas-fired central heating, gas-fired central heating, including boiler replacement, individual gas fires, gas water heating appliances, hot and cold water services generally. It also includes central heating Landlords gas safety checks only and the testing and cleaning of mains powered smoke alarms (excluding replacement). The Contract also includes the testing and cleaning of mains powered carbon monoxide alarms (where fitted) and installation of mains powered carbon monoxide alarms (where absent).

The Contract covers all gas, oil and electric wet heating systems and hot water appliances, including flues, within the dwellings in the schedule.

No appliance shall be deleted from the Contract due to age, manufacture or any other reason without the agreement of the Contract Administrator.

The Contractor shall acquaint and satisfy himself with all the conditions likely to affect the execution of the works including the type of appliance, its situation and location within the dwelling.

No claim will be allowed for additional payments on the grounds of any misunderstanding or ignorance due to lack of knowledge of the conditions or requirements on which the works are to be executed. The current year's schedule of roads is attached as an appendix and the successful contractor will be provided with an updated schedule at start of the contract. Any internal access will be by prior appointment only via the Councils Tenant Liaison Manager.

The Employer shall be entitled to delete and add properties located within the Contract Area to the Contract from time to time as necessary.

Tenderers are reminded that the current policy of the Council calls for the sale of individual properties in the housing stock to the tenants of the Tendring District Council under the "Right to Buy" legislation and that the sales could take place prior to and within the period of this Contract, which will influence the total number of dwellings stated, the total number being likely to diminish at approximately 0.50% per annum if current trends continue.

Tenderers should also be aware that the Council has an ongoing program of heating refurbishment, and that dwellings will be withdrawn from this contract for the period covered by manufacturers / installers warranties. This is currently 2 years, but subject to change should this Council obtain extended warranties. Following this period dwellings will be added back into this contract following the expiry month of warranty.

In the event of such variation to the total number of dwellings, an adjustment will be made accordingly, based on the months remaining in the contract. (See Conditions of Contract clauses 6 & 54)

Tending District council may wish to explore the use of PDA equipment in the future for this contract.

### **Name of the Parties**

Unless otherwise stated the address of the parties named below is:  
Town Hall, Station Road, Clacton on Sea, Essex. (Telephone 01255 686868)

Employer:	Tending District Council (TDC)
Contract Administrator:	D Williams BSc (Hons) MCIPD MInstLM Building Development & Facilities Manager

- or such other person as the employer may from time to time appoint and notify to the Contractor.

Contractor:

Contractor shall be deemed to mean the individual or Firm or Company undertaking the works and shall include the legal personal representatives of such individual or of the persons comprising such Firm or Company and the permitted assigns of such individual or Firm or Company.

### **The Site**

A site comprises any property owned or other places controlled and/or managed by the Employer located within the Tending District and where the Contractor is required to work.

Working area for the Contractor will be confined to land surrounding the site and only to the extent reasonably necessary to carry out the works.

### **Access to Occupied Premises**

Most dwellings will be occupied during the Contract. Make arrangements with the occupants for access. In the case of annual servicing, the Contractor will give written notification to occupants (in the case of sheltered units, and to the Sheltered Scheme Surveyor) at least 7 days before access is required, and the cost of which is to be included within in the Contractor's Tender.

Carry out the works without undue inconvenience and nuisance and without danger to occupants and users.

No work-person is to be allowed to trespass upon adjoining properties. If the execution of the work requires that work-persons must enter upon adjoining property, the necessary permission must be first obtained by the Contractor who is to see that these instructions are carried out. The Contractor shall indemnify the Council against any claim or action for damages on account of any trespass or other misconduct of his employees. Work-persons will be allowed only into such parts of the site and buildings at the Council's housing estates as may be necessary to execute the works from time to time ordered hereunder.

The Contractor will be issued with a register list of properties relating to this area, that require a "TWO Persons" visit to carry out any servicing and or repair work under the contract.

### **Identity Cards**

Approved by the Employer shall be provided by the Contractor at his own expense for every operative employed by himself or any of his sub-contractors. Every identity card shall bear the holder's passport sized photograph and such other particulars as the Employer may from time to time require and shall

be encased in clear vinyl and permanently sealed. Tenants of Council dwellings may refuse entry to operatives unable to produce an appropriate identity card.

### **Contractor's Liability/Responsibility**

The Contractor "MUST ACHIEVE" a 100% servicing and testing of the heating system within each 12 month period to every individual property shown in the schedule

Carrying out a safety check and service on the gas appliances within a 12 month period.

Maintaining up to date records and regularly updating the database for the safety check and servicing programme, including dates and details of all letters and appointments.

Ensuring that close and prompt contact is kept with relevant staff at Tendring District Council in cases of non access or of any delays in the annual programme.

### **Damage and Theft.**

The Contractor will be solely responsible for safeguarding the works, materials and plant against damage and theft and he is advised to effect such additional insurance as is necessary to adequately cover such risks.

### **Abortive Calls**

In connection with the annual servicing part of the Contract, the Contractor is expected to make three attempts to gain admittance to the dwellings listed. A card shall be left informing the tenant when visit was made. The card will also have a telephone number for the tenant to contact the Contractor direct to make a future appointment. The Contractor will maintain records of the date and times of all calls made. After the second abortive call, The Contract Administrator will be notified in writing giving the dates of the calls. The Contract Administrator (Tenants Liaison Officer) will write to the tenant and issue such further instructions as deemed necessary.

In connection with the maintenance part of the Contract, the Contractor is to make all reasonable efforts to gain admittance in order to carry out maintenance work. Should access not be possible, a card shall be left referring requests from tenants for maintenance visits to their Area Housing Office and the CA informed on a daily faxed log sheet.

All costs incurred in making arrangements to gain access for the servicing or repairs of gas appliances is deemed to be included in the Contractor's Tender. There are no separate additional costs for no access or abortive calls, except if the Contractor can prove he has made an appointment with the tenant which tenant failed to keep.

### **Unoccupied Void Premises**

Make arrangements with the Contract Administrator (in the case of sheltered units, to the Sheltered Scheme Surveyor /Careline) for access to carry out works inside unoccupied dwellings within 24 hours of instruction as clause 6.17 of the Conditions of Contract.

### **The Contract**

#### **Form, Type and Conditions of Contract**

#### **Contract under Seal**

The Tenderers attention is particularly drawn to the fact that the Contract will be under seal.

#### **Form of Contract**

The full texts of the conditions are included in The Conditions of Contract.

#### **Contractor's Programme**

The Programme shall be in the following block form: -

Prior to the commencement of the servicing, the Contractor shall produce a progress chart/programme showing the anticipated progress of the servicing (copy to provided to the CA) that is to be completed by the required dates of each year.

The progress chart/programme is to be split into areas of block servicing of appliances by name of town/village and under no circumstances, apart from access difficulty, will progression to the next town/village for servicing of appliance will be allowed until the first town/village is completed, bar any properties outstanding where access has been difficult, or several attempts to gain access has failed, in order to service the appliance(s).

### **Working Hours**

The Contractors "Normal" working hours shall be taken to be 08.00 until 19.00 hrs Monday to Friday, and Saturday 08.00 until 17.00 hrs. Working hours outside of these "normal" hours shall be at no extra cost to the Employer except in the case of a logged callout by Council's Careline service, for which a payment will be made as priced in the Schedule of Rates.

The Employer's (TDC) working hours shall be taken as 08.45 until 17.15 hrs Monday to Thursday and 08.45 to 16.45 hrs Friday. Outside these times the Council's "Careline" service will be in operation to deal with all out of hours calls.

### **Progress Meetings**

The Contract Administrator will hold progress meetings on a monthly basis. Quarterly meetings will be held to review the performance of the Contractor. The Contractor shall attend such meetings.

### **Essential Services**

Maintain essential services while work is in progress. Reconnect all services at end of day.

### **Issue of Instructions**

All instructions will be issued by telephone together with an identification code. All such instructions will be confirmed by a written order.

The Contractor must use the order reference number on all correspondence.

### **Completion**

Upon completion of works in connection with servicing, survey or landlords safety checks, the Contractor must obtain a signature from the tenant confirming that the work has been carried out, and a copy forwarded immediately to the Contract Administrator. No payment will be made if a tenant's signature is not obtained and dated.

### **Tender/Contract Documents**

The tender/contract documents will comprise of the following: -

Schedule/Section No	1	General Particulars, Preliminaries & Conditions of Contract
	2	Gas Escape Procedures
	2A	Gas Burning Equipment Installation, Testing and Servicing Safety Procedures
	3	General Conditions
	4	Standard Specification
	5	Schedule of Maintenance Operations - Sheltered Housing
	6	Schedule of Maintenance Records - Sheltered Housing
	7	Schedule of Sheltered Housing Unit Buildings
	8	Indicative list of General Housing Properties
	9	Schedule of Plant - Sheltered Housing
	10	Servicing and Maintenance of Mains Powered Smoke Alarms
	10A	Servicing and Maintenance of Mains Powered CO Alarms
	11	Daywork & Contingencies – General Housing Properties
	12	Schedule of Rates - General Housing Properties
	13	Schedule of Rates - Sheltered Housing

- 14 Appendices
- 15 Tender Summary
- 16 Form of Tender
- 17 Schedule of Repairs Addresses / Servicing Schedule - bound separately (only supplied to the successful contractor together with last date of servicing at each property)

### **Contract Period and Audit**

The Contract Period shall commence from the 1<sup>st</sup> October 2016 to the 30<sup>th</sup> September 2019, with possible further extension up to maximum of two years. Subject to Annual Satisfactory Performance and Reviews. The Contract will be audited yearly. The Contractor shall retain all relevant documentation after agreement of the final account in order for the account to be submitted to the Council's Internal Audit for approval of final payment / retention.

### **Pricing Instructions**

1. Generally the Contractor is required to fully price the pricing schedules and the schedules of rates. Prices must be fully inclusive of all costs and charges.

Each and every item is to be priced, if lump sums and grouping of items are submitted the Tender will be rejected.

Allow for the whole of the obligations, liabilities and services described in the Preliminary Particulars, Conditions of Contract, Council gas policy and Statutory Regulations and requirements.

Any monetary value set against these items is to be included within the prices in the Schedule of Rates and Daywork Rates.

2. **Servicing and Repairs** - The Contractor is required to price for annual servicing / landlords gas safety check / smoke alarm and carbon monoxide alarm cleaning and testing, to all Council owned appliances at the listed properties. The Council will provide the safety record forms to the contractor. The Contractor is also required to provide an all inclusive cost to repair "on demand" and in accordance with the "Right to Repair" legislation, heating/hot water systems and maintain them in a fully working and satisfactory condition to the extent of the stated liability as described in the standard description of workmanship and materials and tender documents.
3. **Landlords gas safety check only** - The Contractor is required to price for an annual landlords gas safety check only, to all the listed properties that do not have a council owned appliance, but do have a gas supply. The Contractor will supply his own certificates, in the recognised Gas Safe™ Register to these dwellings. Bi-annually the Contractor may be required to visit other properties and confirm that there is no gas present. In both cases clean and test the smoke alarms present and service and test the carbon monoxide alarms present (or install mains powered carbon monoxide alarm if absent).

The information provided is given in good faith for tender purposes only, and is either based on existing knowledge and records or has been assumed.

Payments will be based on actual number of properties and appliances therein. During the term of the Contract the information obtained will be used to update future records and programs of work

### **Execution of Orders**

In cases where work of an urgent nature is required, an order may be given by an approved officer of the Council or the Council's "Careline" Emergency Service, and the Contractor shall at once execute all work that may be necessary to make safe or repair the installation in respect of which the order is given.

The Contract Administrator shall be notified immediately, should it be necessary to carry out any work not included for within this Contract. A covering order shall be obtained for such work prior to it being

carried out, unless such work is an emergency or of an urgent nature, when the Contract Administrator shall be advised at the earliest opportunity.

The Contractor **will** execute all emergency works ordered by the Contract Administrator / Approved Officer under this Contract promptly in order to prevent damage occurring either to persons or property.

When emergency orders have been given verbally or by telephone to the Contractor, confirmation of such orders shall be given in writing under the hand of the Contract Administrator within two working days.

### **Site Administration and Security**

Provide for all site administration costs including the cost of the Contractor's person-in-charge referred to in clause 25 of the Conditions of Contract.

Safeguard the works, materials, plant, etc against damage or theft including providing all necessary watching and lighting.

### **Off Site Administration**

The Contractor shall provide for all off site Management costs including Head office and Depot charges, etc.

### **Transport for Work People**

Provide for all costs in respect of all necessary transport for work people.

### **Security Precautions**

The Contractor when working in an unoccupied property is responsible for ensuring that the security of premises is maintained at all times whilst the property is in his charge and pay any costs incurred.

### **Lighting and Power for the Works**

Provide all artificial lighting and power for use on the Works, pay all charges in connection therewith, provide all temporary connection, leads, fittings, etc and clear away and make good on completion.

The Contractor shall make his own independent arrangements for the supply of electricity in connection with works in domestic dwellings including the provision of portable generators if found necessary. With the permission of the tenant or Council as applicable, the Contractor may use the permanent supply of electricity providing the cost of current consumed is reimbursed.

### **Temporary Accommodation for the use of the Contractor**

The Employer will provide no space or accommodation for the Contractor at any work site and the Contractor must make such arrangements, as he considers necessary for setting up any he may require for the purpose of carrying out this Contract.

### **Notice Boards and Advertising**

The Contractor shall not, without the written consent of the Contract Administrator display any notice or advertisement boards.

### **Safety, Health and Welfare of Work People**

Provide for all costs incurred and comply with all safety, health and welfare regulations appertaining to all work people (including those employed by any sub-contractor) employed on the works.

The Contractor shall provide where necessary all safety equipment and clothing required to comply with current safety standards and any other protective clothing and measures required for the use of all work people.

### **Protection of Persons and Property - Health and Safety at Work Act**

The Contractor shall provide for the efficient protection of the Tenants, the Public, the Employer's officers, servants and property and all other persons occupying or using the premises, also of adjoining or neighbouring property (not connected with the works) during the progress of the Works included in or required to be done in connection with the Contract.

The Contractor shall take all precautions to eliminate as far as possible the danger to the public and other persons arising from the entry or exit of vehicles to and from sites or premises.

The Contractor shall provide when necessary Safety Helmets complying with current safety standards and any other protective clothing for the use of all Employer's officers and servants visiting the site in connection with the works.

The attention of the Contractor is drawn to the provisions of the

Health and Safety at Work etc Act 1974;  
 Gas Safety (Installation and Use) Regulations 1998 (herein referred to as GSIUR 1998);  
 Gas Safety (Management) Regulations 1996;  
 The Electricity at Work Regulations 1989;  
 Management of Health and Safety at Work Regulations 1999;  
 Provision and Use of Work Equipment Regulations 1998;  
 Manual Handling Operations Regulations 1992 (as amended);  
 Personal Protective Equipment at Work Regulations 1992;  
 The Personal Protective Equipment Regulations 2002;  
 The Control of Noise at Work Regulations 2005;  
 The Control of Substances Hazardous to Health Regulations 2002 (as amended);  
 Workplace (Health, Safety and Welfare) Regulations 1992;  
 The Building Regulations;  
 The Local Water authority Bye-laws;  
 The Institute of Electrical Engineers Wiring Regulations B.S.7671:2008 (as amended);  
 All relevant British /European Standards and Codes of Practice;  
 and all other relevant statutory provisions, whether stated or not, for and during the execution of this contract.

The Contractor shall be responsible for ensuring that all plant is placed, used and all operations carried out in such a manner as to prevent injury to persons or loss or damage to property in the event of any accident occurring, with particular attention to Sections 3 and 4 of the Health and Safety at Work etc Act 1974.

All reasonable means are to be used to avoid inconveniencing adjoining owners, where Health and Safety aids are required; permission and explanations should be freely obtained and given.

The Contractor is to permit free access to any Safety Officer whether employed by the Government or the Authority to any part of the site or works.

### **Data Protection**

- 1.1 In relation to all Personal Data, the Contractor and the Council shall at all times comply with the requirements of the Data Protection Act 1998 (as amended) (DPA).
- 1.2 The Contractor shall and shall procure that each Sub-contractor shall:
  - 1.2.1 process Personal Data belonging to the Council only on the instructions of the Council;
  - 1.2.2 only undertake processing of Personal Data reasonably required in connection with the Agreement and shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 1.3 The Contractor shall not disclose Personal Data to any third parties other than:
  - 1.3.1 to employees and Sub-contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Agreement; or
  - 1.3.2 to the extent required under a court order;



- 1.3.3 provided that disclosure under Clause 1.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 1 (Data Protection) and that the Contractor shall give notice in writing to the Council of any disclosure of Personal Data which it or a Sub-contractor is required to make under Clause 1.3.2 as soon as reasonably practicable.
- 1.4 The Contractor shall bring into effect and maintain and procure that all relevant Sub-Contractors have in effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data.
- 1.5 The Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor and the Sub-contractors referred to in Clause 1.4. Within 10 working days of such a request the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Council can determine (at all times acting reasonably) whether or not, in connection with the Personal Data, it is compliant with the DPA. Where the Council makes repeated requests under this clause for the same information the Contractor may raise, and the Council will pay, a reasonable charge for such request if compliance with such request would cause the Contractor to incur the expenditure of material time or cost.
- 1.6 Both parties shall ensure that any Personal Data they obtain and provide to the other party has been fairly and lawfully obtained and complies with the DPA and that the use thereof in accordance with the Agreement by the other party shall not breach any provisions of the DPA.
- 1.7 If:
- 1.7.1 under the DPA, the Council is required to provide information to a data subject in relation to Personal Data when it is in the possession or under the control of the Contractor; and
- 1.7.2 the Council informs the Contractor in writing that this is the case;
- 1.7.3 then the Contractor shall procure reasonable and prompt co-operation to the Council in meeting its obligations under the DPA including making copies of the relevant Personal Data.
- 1.8 The Council shall provide the Contractor and the Contractor shall provide the Council as soon as practicable, with such information in relation to Personal Data and their processing as the second party may reasonably request in writing and the first such party may reasonably be able to provide in order for the second party to:-
- 1.8.1 comply with its obligations under this clause and the DPA, and
- 1.8.2 assess whether the processing of Personal Data in connection with the Agreement is breaching or may breach the DPA in a manner which is material and not effectively sanctioned by any guidance statement issued by the Information Commissioner.
- 1.9.1 Each party shall indemnify and keep indemnified the other against all losses, liabilities, costs, claims, demands and expenses incurred by the indemnified party in respect of any breach of this Clause 1 (Data Protection) by the indemnifying party, including in the case of the Contractor any breach of this clause by a Sub-contractor. The obligations of indemnity accepted by each party in this Clause 1 are conditional upon the indemnifying party being allowed the exclusive right to control the investigation, defence and settlement of each such claim and the reasonable assistance of the indemnified party in the defence (including the obligation that the indemnified party makes no admission in relation to any claim arising by breach of this Clause 1 (Data Protection) of the claim.

### **Freedom of Information Act 2000**

The Contractor acknowledges the Council's obligations under the Freedom of Information Act 2000 (referred to as "FOIA") and which may require the Council to provide to a third party information relating to this Agreement or to the Contractor

The Contractor will facilitate the Council's compliance with FOIA and will comply with any reasonable request from the Council to that end within 10 working days of receipt of that request.

For the purposes of this Agreement confidential information shall exclude any information that the Council is obliged to disclose to a person under the provisions of the FOIA and any codes of practice and guidance issued by the Government and the Information Commissioner.

### **EEC Single Market**

Any code or specification of work or materials appertaining to British Codes or Standards shall, where without prejudice to the legally binding national rules and insofar as they are compatible with Community Law, include European Standards, European technical approvals and common technical specifications of the EEC but without additional cost to the Employer.

### **Legal Compliance**

The Contractor shall comply with all relevant Acts of Parliament, Statutory Regulations, Codes of Practice and the like relating to the service, including compliance with any obligations which may be imposed by the same on the Authority whether stated or not.

### **Storage and Use of LPG**

The Contractor's attention is drawn to Guidance Notices CS4 and CS6, plus HSE and UKLPG guidance, which will apply to the use and storage of LPG on the Employer's projects, subject to the following: -

1. LPG cylinders are not to be left unattended for long periods either during the day, overnight or at weekends.
2. Under no circumstances are LPG cylinders to be stored or left on and only those cylinders required for immediate use will be allowed on the site.
3. Storage of LPG cylinders on Employers projects will not be allowed.

### **Contractor's Employees**

The Contractor shall employ in and about the provision of the services only such persons as are careful, skilled and honest and experienced in the work, which they are to perform.

The Contractor shall employ sufficient staff to ensure that the services are provided at all times in accordance with the Contract.

Accordingly, it shall be the duty of the Contractor to ensure in particular that a sufficient reserve of staff is available to provide the services during staff holidays or absence through sickness or otherwise.

The Contractor shall comply with all laws that prohibit discrimination in relation to employment.

The Contractor shall ensure that every person employed by the Contractor in and about the provision of the services is competent and at all times properly and sufficiently trained to a standard relative up to Gas Safe™ Certification, including National Accreditation Certificate Scheme and hold a current ACOP certificate covering the required areas of work undertaken for each individual gas fitting operation and instructed with regard to:

- (a) The task or tasks that person has to perform;
- (b) Any relevant provisions of the contract;
- (c) Relevant rules, procedures and standards of the Employers;
- (d) All relevant rules, procedures and statutory requirements concerning Health and Safety at Work.
- (e) Fire risks and fire precautions
- (f) The necessity to observe the highest standards of courtesy and consideration to the public to promote and enhance the Employer's image and reputation.

The Contractor shall be entirely responsible for the employment and conditions of service of its own employees including without limitation the payment of salaries and wages. The Contractor shall and shall ensure that its employees shall comply with all relevant rules, codes, policies, procedures and standards of the Employer which may be notified to the Contractor by the Contract Administrator from time to time and with all relevant statutes, statutory orders and regulations.

The Contract Administrator may, but not unreasonably or veraciously, instruct the Contractor to take disciplinary action or other action in relation to or remove from the provisions of the service any person

employed in or about the provision of the services by the Contractor (which for the avoidance of doubt shall include the person in charge or his deputy) and the Contractor shall forthwith comply with such instructions. The Employer shall not in any circumstances be liable to the Contractor or any of its employees in relation to any such action or removal and the Contractor shall fully and promptly indemnify the Employer in respect of any claims brought by any such employee arising therefrom.

The Contractor shall ensure that its employees carry out their duties and behave while on the Employer's premises in an orderly manner and in as quiet a manner as may reasonably be practical, having regard to the nature of the duties being performed by them. The Contractor shall further ensure that its employees do not unlawfully remove any article or thing from any of the Employer's premises, whether the property of the Employer or of its employees, agents or sub-contractors or of other persons.

The Contractor shall not, and shall procure that none of its employees shall, do any act or thing at any location or area except for the proper carrying out of the Services in accordance with the Contract.

The contractor shall ensure that its employees carry on them at all times a Gas Safe™ Registered Installer ID Card.

The Contractor will provide the Contract Administrator with copies of all Gas Safe™ ID cards in force and current qualifications of all staff employed in the discharge of the duties within this contract.

### **Protection, Drying And Cleaning**

Provide for all necessary obligations: -

Protection of all parts of existing buildings, which are to remain, fixtures and fittings, and make good, any damage caused.

Protection of tenants furnishings, or fittings and equipment.

Treatment or replacement of any trees or shrubs damaged or removed without approval.

Cleaning the works, thoroughly removing all splashed deposits, rubbish and surplus materials.

### **Public and Private Services**

Adequately protect, uphold, maintain and prevent damage to all services. Do not interfere with their operation without the consent of the service authorities or private owners, or the Contract Administrator, as appropriate.

If any damage results from the execution of the works, immediately: -

Notify the Contract Administrator and appropriate service authority.

Make arrangements for the work to be made good without delay to the satisfaction of the service authorities or private owners as appropriate.

### **Control of Noise and Pollution**

The Contractor's attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 with reference to the control of noise in relation to any demolition and construction works and to the obtaining of any necessary prior consents from the responsible Authority. The Contractor shall comply with all requirements and restrictions, which may be imposed, and he shall allow for the cost of any such compliance in his Schedule of Rates.

No instruction issued to the Contractor by the Contract Administrator shall relieve the Contractor from his responsibility for compliance with the Act.

Provide for taking all necessary precautions to prevent nuisance from water, smoke, dust, rubbish and other causes.

**Nuisance**

The Contractor shall not obstruct any public way or otherwise permit to be done anything, which may amount to a nuisance or annoyance, and shall not interfere with any right of way or light to adjoining property.

The Contractor is requested to instruct the engineers not to play their radios without the consent of the tenant, and have due consideration to the noise level of the radio if permission is granted.

**All Other Statutory Obligations**

Provide for complying with all other statutory obligations not herein before mentioned.

**Communication**

All communications and correspondence, including invoices notices, record claims and the like shall be in the English language.

**Cost of Preliminary Items**

The Contractor is deemed to have included the cost of all the above items within the priced Schedule of Rates

**Fixed price & Inflation costs**

The Contract will be on a FIXED PRICE BASIS FROM 1<sup>ST</sup> October 2016 to 30th September 2019. No increases for inflation will be allowed.

The contract may be extended for a further two year period subject to satisfactory performance and contract compliance by the Contractor. The percentage increases for this extension period will be as stated in the Tender Summary.

The successful Tenderer will be expected to complete all mobilization set up and re-staffing (if required) obtaining stock and parts to ensure that active work can commence at 00.01 on 1<sup>st</sup> October 2016.

**Guarantee Bond**

Not required.

## CONDITIONS OF CONTRACT

### For Servicing and Maintenance of Centralised Gas Fired Installations and Gas Fired Installations In Housing Properties Including Emergency Call Out and landlords Gas Safety Checks

#### **1. Definitions**

Throughout the incorporated documents the following conditions apply:

- 1.1 "The Contract" means all the documents forming the Tender and acceptance thereof, together with the documents referred to therein.
- 1.2 "Employer" and "Council" means "The Executive Leader, The Chairman and Members of Tendring District Council".
- 1.3 "The Contractor" means the individual(s) or firm(s) or company(ies) undertaking the works and shall include the legal personal representatives of such individual or the persons composing such firms and the permitted assigns of such individual or firm or company
- 1.4 "The Contract Administrator" (hereinafter referred to as the CA) means the Building Development & Facilities Manager, or his duly authorised representative and will include any person acting for him in accordance with Conditions of Contract clause 5.
- 1.5 The word "Service" for the purposes of this Contract shall mean the inspection and maintenance servicing in accordance with the Manufactures Instructions, GSIUR 1998, Gas Safe <sup>TM</sup> register requirements.
- 1.6 The phrase "repair on demand" and "right to repair" for the purposes of this Contract shall mean to remedy defects found or notified of, by replacement or repair, and to maintain the same in full working order during the period of the Contract.
- 1.7 The phrase "Landlords Gas Safety Check" for the purposes of this Contract shall mean to test for tightness and visually inspect all gas installation pipework and all gas appliances in the property in accordance with GSIUR 1998, and Gas Safe <sup>TM</sup> register requirements.
- 1.8 The word "Unit" for the purposes of the Contract is per system in a dwelling that appears in the Schedule of Premises, and shall relate to both the Service, and Repair on Demand work undertaken by the Contractor.
- 1.9 "Order" means the requisition of and the description of an item or items of work (and the supply of labour and/or materials) to be performed under this Contract and no right or liabilities shall arise under this Contract except the right and liabilities created by such Order. "Order" includes any instruction varying or modifying the terms of any Order or cancelling any Order.
- 1.10 "The Works" means the works ordered from time to time in accordance with this Contract, including all obligations and services to be performed under this Contract.
- 1.11 "The Contract Area" is the proportion of the Tendring District allocated as the North or South as defined in the preliminary clauses.

- 1.12 "The Site/Premises" means property specified in Schedule of Premises, and/or other place on, into, or through which is to be executed under the Contract. Any building(s), adjacent land, path or street or water which may be allotted or used for the purpose of carrying out the Contract.
- 1.13 "The accepted risks" means the risks of fire, lightning, explosion, storm tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft or other aerial devices and things dropped therefrom, pressure waves, ionising radiation, contamination by radioactivity, riot, civil commotion, military or usurped power and Kings enemy risks.
- 1.14 "Kings enemy risks" shall have the meaning assigned to it by Section 15(1)(a) of the War Risks Insurance Act, 1939, or any Statutory modification thereof, and by any Order made under the said Act or under any statutory modification thereof, "lost" shall include destroyed; and "loss" shall include destruction.
- 1.15 "The materials" shall mean materials, goods, components, equipment and/or other things required for incorporation in the works.

## **2. Headings**

- 2.1 The headings to these Conditions are for reference purposes only and shall not affect the interpretation thereof

## **3. Confidential Documents and FOIA**

- 3.1 The Contract and all information issued in connection with an order thereon are confidential and shall be strictly confined to the Contractor's own use (except so far as confidential disclosure to Sub-Contractors and suppliers as necessary) and for the purposes of the Contract.
- 3.2 The Contractor acknowledges the Council's obligations under the Freedom of Information Act (referred to as "FOIA") and which may require the Council to provide to a third party information relating to this agreement or to the contractor.
- 3.3 The Contractor will facilitate the Council's compliance with FOIA and will comply with any reasonable request from the Council to that end within 10 working days of receipt of that request.
- 3.4 For the purpose of the Agreement confidential information shall exclude any information that the Council is obliged to disclose to a person under the provisions of the FOIA and any codes of practice and guidance issued by the Government and Information Commissioner

## **4. Notices**

- 4.1 Any demand, notice or other communication, required to be given by either party under the Contract shall be in writing, typescript or printed, and shall be sufficiently served, if served personally on the Addressee or if sent by pre-paid First Class post, by telex, electronic mail or facsimile transmission to the last known place of abode or business of the Contractor. If sent by any of the modes aforesaid it shall be deemed to have been served on the addressee on the date when in the ordinary course of post, it would have been delivered to him.

## **5. Persons acting for the Contract Administrator (CA)**

- 5.1 The Contract Administrator shall appoint an officer whose duty shall be to act on behalf of the Council for the administration of this contract.
- 5.2 The Contract Administrator shall be entitled to appoint such additional persons designated by the said officer, as notified to the Contractor in writing.
- 5.3 The CA and any other person(s) notified in writing shall be regarded as persons acting for The Employer in accordance with Conditions of Contract clause 1.4 and the Contractor shall afford these persons every reasonable facility for the performance of their duties.

## **6. Scope of Contract and Tender pricing**

- 6.1 The purpose of the contract is for the provision of an effective service, comprising of the annual service and repairs on demand, of
- centralised heating, hot water plant and cold water services to sheltered housing units
  - gas fired appliances including central heating boilers (all types) and systems,
  - warm air heating units (including hot water circulators where fitted),
  - single and multipoint water heaters,
  - gas fires, room heaters
  - flues
  - wet central heating systems powered by electric boilers
  - wet central heating systems powered by oil fired boilers
  - annual landlords gas safety check/ Bi-annual checks on non-gas properties
  - annual smoke alarm testing and cleaning service
  - annual carbon monoxide alarm testing and cleaning service (including installation where none present).
  - emergency call out
- 6.2 It will be inclusive of the repair or replacement of all associated component parts, e.g.
- All manual and electrical controls, valves, TRVs(replacement of existing), pumps, F and E tanks/ball valves, system pressurisation units and associated fittings etc., filling loops, A.A.V's, and all primary and secondary pipework associated with the aforementioned components and appliances etc.
- 6.3 The Contractor's price will also be inclusive, for
- Tenant instruction on the use of the system and controls, and resetting of time controls, system venting, and descaling, Cold water storage tank checks and immersion checks, and gas carcass within the dwelling from the meter to the appliance isolation valve and include gas check only on tenants own appliances i.e. cooker, gas fire.
- The Contractor when attending a property with NO gas situation (tenant has no gas at meter) the Contractor shall still carry out the safety tightness test and visual inspection of the system. The Contractor will obtain tenants permission to cap the gas supply on the tenants side of the meter, but should the occasion arise that permission is not be granted the Contractor will report to the CA urgently, at same visit test the smoke detector alarms and carbon monoxide alarms (including installation of mains powered carbon monoxide alarms where none present). The Contractor will at the same time arrange with the tenant a return visit when gas is present in the property and carry out the service at no extra cost to the client.
- 6.4 The contract excludes,
- Radiators, domestic hot and cold supplies (but includes the connections to the hot water storage vessel), programmed replacement of obsolete appliances, renewal of the complete gas carcass.
- 6.5 The Contractor will be required to carry out a "Service" to all appliances as required by the Council in accordance with the schedules and the Manufacturer's instructions, GSIUR 1998 recommendations and Gas Safe™ register requirements. The Contractor will be required to clean, service and test the smoke alarms and carbon monoxide alarms. The Contractor will be required to complete all forms (to be provided) and any "Repair on Demand" necessary to maintain the installations in full working order during the Contract Period.
- 6.6 The Council retains the right to add or delete individual addresses and/or appliances as may be directed by operational circumstances. The Council will pay for any additions at the Schedule of Rates price.
- 6.7 For ease of calculation additions will be paid for from the beginning of the calendar month in which they are added and omissions will be deleted from the beginning of the following month in which they are deleted.

- 6.8 The Contractor shall, within its tendered dwelling price, allow for the repair and/or replacement of all equipment associated with the heating system and hot water system, de-scaling of heat exchangers to maintain the installations in good working order. Where a component of the heating system has failed and is deemed to be obsolete, the contractor may be required to undertake to renew that item with a modern equivalent, including any necessary alterations to the system pipework/wiring when instructed by the CA. In such cases the contractor will be paid on the submitted Schedule of Rates prices. The contractor is to allow for ensuring the correct operation of the F & E ballvalve, filling of pressurized systems and all system venting.
- 6.9 The Contractor shall within its price allow for an emergency call out service and provide a manned telephone number, to accept notification during the hours of 6.00 pm and 8.00 am and all day Saturday, Sunday, Bank and Public Holidays and Statutory Holidays etc. to attend to complete breakdown of heating/hot water system, gas leaks and burst pipes.
- 6.10 Where leaks or burst pipes occur within a dwelling covered by this specification, such leak or burst pipe will be repaired. Where such leaks or burst pipes fall outside the scope of this contract, such leaks or burst pipes will be isolated and made safe. The CA will be notified immediately on the next working day of the actions taken by the Contractor.
- 6.11 The Contractor shall be deemed to have included within its Tender for all costs, howsoever arising, for executing work in occupied properties to include, if necessary, moving, and replacing items of furniture, floor coverings and equipment belonging to the tenant.
- 6.12 The Council reserves the right to appoint one or more contractors in respect of the work to be carried out under this Contract.
- 6.13 The Contract excludes for the programmed replacement of redundant or obsolete gas appliances.
- 6.14 When ordered to do so the Contractor shall execute any works described in the Contract at any site within the Contract Area. The works in the main will be carried out during the hours of 08.00 – 19.00 hrs Monday to Friday and 08.00 - 17.00 hrs on Saturday (different to 6.9 above) However, work outside the said periods are within the scope of this Contract.
- 6.15 The CA may from time to time issue further details and/or instructions, directions and explanations in regard to the variations, quality or quantity of the works or the addition or omission or substitution of any work.
- 6.16 The Contractor shall not make any addition to, or omission from the works described in any Order, except in pursuance of the CA's written instructions.
- 6.17 The value of any additions and omissions shall be included in the monthly payment in respect of the Contract and such additions or omissions shall not invalidate the Order of the Contract. ALL WORKS to a "VOID PROPERTY" will be outside of the program the Contractor produces and he will be required to carry out the works within 24 hours of the instruction.

## **7. Conditions affecting the Works**

- 7.1 The Contractor shall be deemed to have acquainted themselves with all conditions likely to affect the execution of the work; including safety and other regulations in force on the property and any requirements of the Local Authorities and Public Utilities.
- 7.2 The Contractor, prior to submitting the tender, shall be deemed to have visited a selection or all of properties as the Contractor feels necessary, within the area to acquaint themselves of any conditions likely to affect the execution of these works.
- 7.3 The Contractor prior to submitting his tender, shall be deemed to have fully understood these conditions and requirements of the contract, any queries or clarifications shall have been raised previously with the CA.
- 7.4 No claim by the Contractor for additional payment shall be allowed on the grounds of any misunderstanding or misinterpretation due to lack of knowledge of these conditions, regulations or requirements.



**8. Inclusive Rates**

- 8.1 Rates for all items are to include (unless specifically excluded in the item description) for all labour, plant and material to produce the work, together with any necessary ancillaries, labours, appropriate fixings etc (whether stated or not).
- 8.2 The rates for occupied property are to include for all moving of furniture, working around existing occupants, equipment, providing dust sheets and general covering or protection and replacement of same and dusting off at completion.
- 8.3 The rates are also to include for general protection including temporary screens and roofs and diverting of rainwater. For temporary taking out or pulling down or removing items, incidental temporary shoring and scaffolding and removal on completion.
- 8.4 The repair service shall cover every day of the year.

**9. Duration of the Contract**

- 9.1 The Contract will commence on the date specified in the letter of acceptance of the tender which will be 00.01am on the 1<sup>st</sup> October 2016. The contract will remain in force for the period set out in the Tender Documents. Upon acceptance of the Contractor's tender the Contract Administrator (or other designated officer) will administer the contract for the Contract Area the Contractor has been appointed to.
- 9.2 The termination of the Contract by efflux of time shall not affect: -
- 9.2.1 The obligation of the Contractor to carry out and complete, Orders given to them during the Contract Period which will not be completed until after expiry of the Contract.
- 9.2.2 The obligations of the Contractor under Condition 17

**10. General Conduct – Occupied Property**

- 10.1 In order to minimize the disturbance and inconvenience experienced during the completion of major improvement or maintenance works, the following are to be adhered to by the Council's contractors and their sub-contractors (if appropriate) on all occasions: -
- 10.2 The Contractor will be required to perform the contract and ensure that his work force acts in a manner that recognises and respects that the work undertaken will be in property which, whilst in the ownership of the Council, also constitutes the tenant's home.
- 10.3 Residents and their families will be treated in a courteous, polite and reasonable manner.
- 10.4 Special provisions will be made, where necessary, to accommodate the needs of elderly, infirm or vulnerable residents.
- 10.5 Under no circumstances will racist, sexist or abusive language or behavior be tolerated.
- 10.6 The contractor will not commit, or allow to be committed any act of harassment on the basis of a residents colour, race, sex, disability, age, creed, religion, sexual orientation or other reason.
- 10.7 Appropriate and respectable clothing will be worn at all times.
- 10.8 The use of radios/cassettes is prohibited in occupied premises.
- 10.9 Smoking is prohibited in occupied premises or within the property curtilage, if smoking takes place outside, all associated debris will be removed.
- 10.10 The Contractor will carry out the works without undue inconvenience/nuisance and without danger to the occupants.
- 10.11 At all times, the Contractor is required to treat the residents' property and possessions with due care and respect.

**11. Service and Repair / Landlords Safety Checks**

- 11.1 The Contractor shall visit each of the premises detailed in the Schedule of Premises herein in accordance with the area programme provided
- 11.2 The Contractor upon commencement of the Contract shall, within seven days; meet with the CA to discuss the programme of servicing of appliances and smoke alarms / carbon monoxide alarms / landlords safety checks based on the Schedule of Premises to be supplied. In the event of the Contractor being unable to complete the programme, he shall notify the CA, who will issue such amendments or further instructions that are necessary to complete the programme. No alteration to the programme once issued to the CA shall be made due to shortage of maintenance engineers. Upon agreement by the CA of the programme, the Contractor shall immediately implement the programme until instructed to the contrary by the CA.
- 11.3 The Contractor shall provide to the CA a report of each premise where a service, gas check or repair cannot be carried out due to any access. The said report will state clearly the reasons for the inability to complete the works ordered and will be signed, dated and timed by the Contractor's Engineer.
- 11.4 The Contractor shall provide the CA with a report from each premise where a repair on demand has been carried out. Such report will detail the defect and the action taken and any replacement parts fitted. The report will be signed, dated and timed by the Contractor's Engineer.
- 11.5 The Contractor will maintain copies of all tightness tests carried out during repair works, and will supply such copies of certificates as may be requested by the CA. The cost of which shall be deemed to be included within his price.
- 11.6 The Contractor shall be permitted to claim a maximum of £30.00 for recharging the tenants gas supply to enable safety tests to be undertaken after obtaining permission from the CA by telephoning for the request.

**12. Service Procedure**

- 12.1 The Contractor will be issued with a Schedule of Addresses and last date of service to each property, unit or area. The Contractor is to produce his own Program for services and safety checks as required and upon receipt of the same shall arrange access. The Contractor shall endeavour to arrange his visits accordingly.
- 12.2 The servicing of appliances shall be carried out in accordance with the Manufacturers' Recommendations. The Contractor will be required to affix a sticker to each appliance indicating the date of such service and the name of the operative who carried out the service, or such other method as required by the CA.
- 12.3 The Contractor is to ensure that the service engineer has the knowledge and ability to carry out the works as required.
- 12.4 The Contractor shall submit to the CA, on a weekly basis, a service diary indicating the position of the Contractor's staff in order that the CA may undertake the monitoring of work whilst servicing is being carried out.
- 12.5 The Contractor will issue to the CA, on a twice-weekly basis, a list of dwellings serviced during the previous week and a Gas Safety / Service Record duly completed for each dwelling listed and list non-access or no gas.
- 12.6 The Contractor will notify the CA on a weekly basis each contract year; any dwellings where he has still been unable to gain access for servicing purposes. The Contractor will provide a weekly list detailing all dates and times of abortive calls for all cases being referred to the Council once all action taken to gain access has been taken. The CA may arrange for the tenant to be contacted to obtain an appointment or contact number for the Contractor to arrange to complete the work. The Contractor after the second visit and NO access gained must leave a letter and warning sticker in accordance with Conditions of Contract clause 14, and advise the Council of

any changes / contact made once properties have been referred so that the Council are not chasing or threatening action once any subsequent appointments have been made.

- 12.7 The contractor shall provide TDC with the following information on a monthly basis:
- % of properties requiring a gas safety check/service that have been completed.
  - % of properties receiving a gas safety check/service before the due date.
  - % of properties having gas safety check/service carried out at first visit.
  - % of properties having gas safety check/service carried out at second visit.
  - Number of properties without an up to date CP12 certificate.

### **13. Access and Manner of Carrying out Works**

- 13.1 The Contractor shall be responsible for making his own arrangements to gain access to carry out any works. The Contractor shall arrange for an appointment card system to be adopted for gaining entry to dwellings where tenants are out and shall arrange for a telephone number to be available for tenants to contact for alternative appointments.
- 13.2 The Contractor will be deemed to have allowed in his tender for initially writing to arrange with the tenant/occupier (in the case of sheltered units, the Sheltered Scheme Surveyor /Careline) of any property the subject of any works, access to carry out servicing work.

No charge will be accepted in respect of "no access" or "abortive" calls – except if the Contractor can prove that he has made an appointment that the Tenant failed to keep.

- 13.3 The work shall be carried out at such times as may be ordered by the CA, in such a manner as to cause as little inconvenience to tenants, residents and neighbours as possible and no service works are to be carried out between the hours of 19.00hrs and 08.00hrs Monday to Friday and after 17.00hrs on Saturday or on Sundays, Bank and Public Holidays without specific authority from the CA.
- 13.4 The Contractor shall ensure that his employees carry appropriate identification that will be shown to the occupier and the Council's officers when attending at the site of the works.
- 13.5 The successful Contractor will be issued with a register of list of properties that require a "Two person" visit to carry out all testing and works under the contract, and the list will be revised on a regular basis.

### **14. Appointments**

- 14.1 The contractor is required to write to each resident (in the case of sheltered units, and to the Sheltered Scheme Surveyor) giving seven to ten days notice of a proposed appointment for the commencement of works in/to their property and give a reasonable estimate of how long the works will take to complete. This contact is to be the FIRST LETTER and it shall include a copy of the Council's Gas Safety information leaflet (the Council will provide leaflets to the Contractor).
- 14.2 If any dates or times then need to be altered, the resident (in the case of sheltered units, and the Sheltered Scheme Surveyor) should be notified as soon as possible to re-arrange a new mutually convenient appointment.
- 14.3 Where access is not obtained in response to the FIRST LETTER or in response to a new mutually convenient appointment, a SECOND LETTER is to be delivered at the point of the visit giving a further appointment in no more than seven days time.
- 14.4 Where access is not obtained in response to the SECOND LETTER, a THIRD LETTER is to be delivered at the point of visit advising that a referral will be made to the Council for legal action. The contractor shall affix a warning sign sticker to the entrance door and shall take a photograph of the sticker attached to the door. If access is not obtained in response to the THIRD LETTER and warning sign sticker, then the contractor shall advise the Council by the end of the following working day.
- 14.5 The Council shall provide the wording of letters one, two, three and the warning sign, to the contractor prior to commencement of the contract.

- 14.6 The contractor shall seek to gain access for the safety checks/servicing two months prior to the expiry of the current Landlords Gas Safety record (month 10). If access is given to complete the works, records are to be updated and the new Landlords Gas Safety Record is to be provided.
- 14.7 TDC will be seeking for the Contractor to achieve a minimum of 70% success on first access servicing and testing.
- 14.8 **A compensation payment of £25.00 will be paid to the resident by the contractor for each occasion where it can be shown that a pre arranged appointment was not kept.**

**A compensation payment of £25.00 will be paid to the Contractor for each occasion where he can prove and show that after the third pre-arranged appointment he was unable to gain access due the tenant's inability to be present.**

**Any payments or deductions from the above compensation clauses will be assessed on the monthly valuation.**

- 14.9 Payments or deductions are not applicable where a contractor has been denied or is otherwise unable to gain access or where exceptional and/or emergency circumstances prevent their attendance.
- 14.10 Where circumstances result in the contractor being unable to give seven days notice, the resident should be contacted as early as possible and their agreement obtained not to have this notice period. A minimum of 12 hours notice should, however, always be given

## 15. Communication

- 15.1 The Contractor shall arrange to receive daily telephone referrals of work and shall maintain a suitable communications system such that his operatives can be re-directed in the field to respond to emergency situations.
- 15.2 The Contractor's facility for receiving telephone orders for repair works shall be personal contact. Under no circumstances shall recording machines be used.
- 15.3 In order to meet the stated response times and deal with emergency repairs, a telephone manned during working hours and all out of normal working hours periods must be provided by the Contractor to enable him to receive notification of repairs. Transport, spares and labour must be available to deal with repairs promptly.
- 15.4 The Contractor shall provide suitable means of contacting standby operatives during out of normal working **hours to meet the response times given.**

## 16. Repair on demand (Right to repair) and Response Times

- 16.1 The secure tenant of Local Housing Authority (Right to Repair) Regulations 1994, impose on the Council the legal requirements to carry out certain works within the prescribed period, and the Contractor will conform to the following response times in respect of each individual repair on demand request from the time of notification:

- **Gas Leak/water leak (see Gas Escape Procedures Section 2)** **1 hour**
- **Combustion by-product Leak (see Gas Burning Procedures Section 2A)** **2 hours**
- Total or partial loss of Space or Water Heating System between 1<sup>st</sup> November and 30<sup>th</sup> April **24 hours**
- Total or partial loss of Space or Water Heating System between 1<sup>st</sup> May and 31<sup>st</sup> October **THREE working days**

- 16.2 In the event of notification being given before 10.00 hrs on any day the Contractor shall attend to and rectify the fault before 19.00 hrs on the same day.
- 16.3 In the event of the contractor not being able to repair any fault to full working order within the prescribed time limits during the period of 1<sup>st</sup> November to 30<sup>th</sup> April, the Contractor will provide

sufficient temporary heating to the tenant until the repairs are completed. In any event all repairs must be completed within THREE working days.

- 16.4 In the event of an emergency that in the opinion of the Contract Administrator may constitute or amount to a Health and Safety Hazard, medical condition, or similar risk to the occupants of the dwelling, the Contractor shall attend immediately, or in any event, within 2 hours of notification render the system safe, but shall in any event comply with the normal "repair service" within 24 hours. This will apply to normal and out of hour's calls.
- 16.5 The Contractor shall give written notice to the CA of any circumstances beyond his control, which are causing or are likely to cause delay in the completion of the work beyond the response times indicated. In such events the CA may make such extension of time, as he shall deem reasonable.
- 16.6 Where the Contractor has not complied with his obligations to repair to full working order any fault within the prescribed period, and has failed to show just cause for his failure, the Contractor will reimburse the Council any compensation that may be paid to the Tenant, due under the "Right to Repair" legislation. Such payments do not normally exceed £50.00

## **17. Orders and Time for completion**

- 17.1 All orders for "repair on demand" shall be by telephone notification and the Contractor will issue to the notifier a reference number peculiar to the works ordered and the respective Area.
- 17.2 The Contractor shall carry out each order in a diligent and workmanlike manner and the works shall be completed within the specified response time.
- 17.3 All instructions varying or modifying the terms of any previous Order or cancelling any previous Order shall, notwithstanding above, also be in writing on an official variation order form.
- 17.4 All orders or variations orders shall be deemed to be received by the Contractor if sent in the mode described in Conditions of Contract clause 4.
- 17.5 The Contractor shall notify the CA by fax/e-mail, of the previous day's repair works, indicating "job left correct" or "parts required".

## **18. Replacement Appliances**

- 18.1 In the event of the Contractor being of the opinion that the Council owned gas-fired appliance is obsolete or beyond repair he shall immediately notify the CA. The assessment as to whether an appliance is beyond repair is at the discretion of the CA. and documented evidence may be requested from the contractor to substantiate any claim.
- 18.2 Due to the Councils Heating Refurbishment / Decent Homes contract, dwellings with obsolete appliances may be withdrawn from this contract and be updated. However, replacements are not outside the scope of this contract, and the Contractor may be requested by the CA in writing to replace the appliance. Payment will be made on the submitted schedule of rates.

## **19. Potentially Dangerous Appliances**

- 19.1 The Contractor will not leave any appliance in a potentially dangerous condition including Tenants own appliances and will disconnect and cap-off any appliance and/or system that fails to conform to any statutory regulation if repairs fall outside the scope of this Contract.
- 19.2 In the event of the Contractor having to take such action he shall immediately notify the CA. for council owed appliances The Contractor will issue a warning notice accordingly, leaving one copy with the resident and forwarding one copy to the CA.

## **20. Breakdown of Heating System and Provision of Temporary Heating**

- 20.1 In the event of a breakdown of the entire heating system in any property occupied by a Senior Citizen, or in respect of any other property, as directed by the CA, the Contractor will provide immediate temporary heating, comprising of a minimum of two 3Kw electric fan heaters (PAT

tested annually with the current test date affixed to the appliance for inspection), until such time as the necessary repair work has been completed (see also Conditions of Contract clause 16)

- 20.2 The Contractor shall carry a stock of temporary heaters to enable services to be maintained in the event of delays to repairs due to non-availability of parts/materials. The Contractors price shall include for collection and delivery of temporary heaters and collect the appliances upon completion of repairs, and annual PAT testing
- 20.3 The Contractor shall allow within his Tender Price for the provision of temporary heating as required by this Conditions of Contract clause 20.

## **21. Unfinished Work**

- 21.1 The Contractor shall be responsible for leaving all unfinished works in a safe condition at the end of each day's work, and shall include for making and fixing any temporary supports or other protective devices which will, in the opinion of the CA, provide adequate protection from interference, and damage or injury to, unauthorised persons or the public at large.

## **22. Progress of the Works**

- 22.1 The Contractor shall perform the work under the Contract as shown on the Contractor's own programme of work to the approval of the CA. Works are to be completed in accordance with the programme of servicing, and the Contractor must show that the FIRST and SECOND visits were made within the month ten of the last service, before reporting to the CA. The FIRST and SECOND visits shall be carried out within the first half of month ten so that once it is referred to the Council, the Council have an opportunity to commence legal action if necessary, before the service is overdue. For the purpose of repairs of the appliances, at the earliest possible date and within the prescribed periods.
- 22.2 The Council will compile a list of properties where there have been significant access issues and the contractor will be required to commence initial contact with these properties in month nine.
- 22.3 In the event of the works being delayed or the servicing programme being disrupted due to any direction by the CA, the time specified for the completion of the work may be extended by the CA for such period as shall deem reasonable.

## **23. Inspection of the Works**

- 23.1 The Council, or other body authorised by the Council, will at random in NO particular order or basis, inspect the work performed under the contract to ascertain that each has been properly carried out, and is in a fit state, but such inspection shall in no way remove from the Contractor its responsibility for the due and proper performance of the Contract.
- 23.2 The contractor shall provide to the CA a list of all operatives work to allow a reasonable audit regime.
- 23.3 Servicing shall comply with manufacturer's/ Gas Safe <sup>TM</sup> register requirements and all current British Standards and Building Regulations in force during the Contract Period
- 23.4 Where it is found that the servicing has not been carried out correctly, the contractor will return and remedy the faults at his own expense and reimburse the council all costs and charges incurred and reasonable administration charges calculated at £25.00 per hour.
- 23.5 The Contractors manager/supervisor shall post inspect 25% of the works carried out by their operatives. The CA shall be entitled to accompany the Contractor at any post inspection. The Contractor shall provide a report of the inspections, in an agreed format to the CA.

## **24. Tests**

- 24.1 The Contractor shall allow for carrying out any tests required by the contract conditions

## **25. Contract Duties and Provision of Labour**

- 25.1 In the performance of the works specified in the Contractual Documents the Contractor shall be responsible for the employment of adequate labour, supporting personnel, and the availability of Plant etc., for the completion of the works.
- 25.2 The Contractor will provide **all** necessary Supervision and grades of labour necessary to complete the Works under the Contract in a workmanlike manner within the specified response time. Only persons who have adequate knowledge of the works being undertaken and the technical background required in performing the Works, shall give such management and supervision.
- 25.3 The Contractor is to provide all labour necessary for carrying out the works and shall include for all disbursements arising from the employment of workpeople including National Insurance, Pensions, and The Redundancy Act 1965. Holidays with pay and any necessary transport of workpeople etc.
- 25.4 The Contractor shall issue identity cards to include a photograph of the holder, to all personnel employed in respect of this Contract.
- 25.5 The Contractor shall also ensure that trade custom in the employment of the work-persons is followed throughout the execution of the Works.
- 25.6 Labour considered by the CA to be unsuitable in the grade or skill in which they are employed shall be either re-graded or taken off the work and replaced by the correctly qualified persons.
- 25.7 The names of personnel to be employed by the Contractor in a supervisory capacity (e.g. supervisor, foreman or chargehand) are to be given to the CA immediately after appointment to this Contract and any subsequent changes are to be immediately notified.
- 25.8 The Contractor shall furnish such daily and weekly returns of persons employed (including Supervisory Staff) and material used, as may be required by the CA.
- 25.9 The Contractor must be a Member of the Gas Safe <sup>TM</sup> Register installer and/or any employee as required by the regulations, evidence of which shall be produced to the Tendring District Council upon request.
- 25.10 The Contractor shall provide an adequate level of suitably qualified field supervision and be a member of the Gas Safe <sup>TM</sup> Register.
- 25.11 Fitters/Engineers employed by the Contractor on this Contract must be competent to work in accordance with the current gas regulations, and hold a current ACOPs certificate covering the required areas of work undertaken.
- 25.12 The Contractor shall ensure that all persons employed by him for servicing shall have had adequate instructions and training in the correct method of servicing the appliances and in the appropriate repair and maintenance requirements, manufacturer's instructions, and statutory regulations.
- 25.13 The Contractor will provide to the CA copies of all Gas Safe <sup>TM</sup> registration details for all operative working on this contract
- 25.14 The contractor will make available to his operative a means of communication to allow a defect/problem to be reported to the CA whilst the engineer is still on site.

## **26. Other Contractors**

- 26.1 Other Contractors may be working on the site and the Contractor may, in such cases, be required to work in close co-operation therewith. If the Contractor, due to non co-operation with another Contractor on site, disrupts the work and/or causes inconvenience to the Occupier, the provisions of Conditions of Contract clause 58 shall apply. Continual problems with working with other Contractors will result in no further work being given to the Contractor under this (or any other) Contract which may also be determined in accordance with Conditions of Contract clause 59.

## **27. Sub Contracts**

- 27.1 The Contractor shall not without the prior consent of the Employer in writing under the hand of its CA, sub-let the works or portion thereof. Permission will be refused if the proposed Sub-Contractor has been dismissed from a Council Contract that they have been employed on, either directly or indirectly, by reason of their failure to perform the works or have caused death or injury to any person whilst carrying out works for that Council, or have been found guilty of corrupt practices.
- 27.2 The Contractor will not be given consent to sub-let the works if in the opinion of the CA, the work should be within the commercial knowledge and capacity of the Contractor. The Council reserves to itself the entitlement to dismiss a contractor, under Conditions of Contract clause 59, who does not have the capacity to carry out a substantial level of work itself.
- 27.3 The Contractor shall be responsible for the supervision and administration of all sub-contracts allowed by the CA and shall arrange programs with each sub-contractor to permit the works being completed by the date for completion.
- 27.4 The Council holds the Contractor responsible for the works carried out by a Domestic Sub-Contractor and their compliance with all Statutes, together with all Regulations, Orders, Byelaws, Codes of Practice etc arising therefrom.

## **28. Overtime**

- 28.1 The Contractor shall not normally be prevented from working reasonable additional hours, should he so desire, provided that he obtains the prior approval of the CA, but no additional payment shall be made in respect of the cost of any overtime. All costs shall be deemed to be included in the tender price and no additional costs over and above this will be paid.

## **29. Provision of Plant and Payment of Fees and Charges**

- 29.1 The Contractor shall provide requisite plant, equipment and temporary buildings for the proper execution of all work which he is required to carry out under this Contract, including tackle, machinery, tools or other appliances and everything necessary for the use of his work-persons and shall be responsible for the carrying thereof to the spot where they are required and for any necessary erection and for subsequent removal as soon as works are completed to the satisfaction of the CA.
- 29.2 The Contractor shall pay and indemnify the Council against liability in respect of any fees or charges (including any Rates or Taxes) legally demanded under any Act of Parliament, or instrument, rule or order made under any Act of Parliament or any regulations or bye-law of any Local Authority, or of any statutory undertaking in respect of the Works.

## **30. Provision of Materials**

- 30.1 The Contractor shall provide all materials necessary for the execution of any work he is ordered to carry out under this Contract.
- 30.2 The Contractor shall keep a sufficient stock of replacement parts at all times during the period of the Contract and will ensure that all Contractors' vehicles carry a sufficient stock to the satisfaction of the CA. The shortage of replacement parts and/or materials will not generally be considered by the CA as grounds for an extension of time for completion of an order.
- 30.3 Replacement parts will be of the like type and manufacture where possible or if such parts are unavailable, parts of a similar approved type and kind may be used with the prior approval of the CA.
- 30.4 The CA at his discretion may notify the Contractor on commencement of the Contract Period of those items to which he requires an adequate supply to be kept by the Contractor. The Contractor shall use his best endeavours to acquire those items required and shall notify the CA immediately if he is unable to obtain any or all giving full reasons for their unavailability. The CA, if required, shall indicate the number of each item, which the Contractor will be required to keep for the duration of the Contract.



- 30.5 In the event of the Contractor experiencing delays in obtaining replacement parts during the course of the works the Contractor shall, immediately, notify the CA who shall issue further instructions, if necessary.
- 30.6 The Contractor shall provide the CA with a list of those items held for the purposes of the Contract in his stores.
- 30.7 The CA may at any time advise the Contractor to increase or reduce those items held in his stores.
- 30.8 The Council will not be responsible for the cost of any items that are held by the Contractor upon determination, or conclusion of the Contract.
- 30.9 The Contractor shall provide all materials necessary for the execution of any work he is ordered to carry out under this Contract.

### **31. Materials, Works and Workmanship to Conform to Description**

- 31.1 All materials shall be of the respective kinds described in the Schedule of Rates, the Specification and the Contractor shall upon the request of the CA furnish him with proof to his satisfaction that the materials so conform.
- 31.2 The works shall be executed in a workmanlike manner and to the satisfaction in all respects of the CA. Where quality of workmanship and method has not been stated or where any doubts exist, the work shall conform to the following and any amendments thereto: -
- Health and Safety at Work etc Act 1974;  
Gas Safety (Installation and Use) Regulations 1998 (herein referred to as GSIUR 1998);  
The Electricity at Work Regulations 1989;  
Management of Health and Safety at Work Regulations 1999;  
Provision and Use of Work Equipment Regulations 1998;  
Manual Handling Operations Regulations 1992 (as amended);  
Personal Protective Equipment at Work Regulations 1992;  
The Personal Protective Equipment Regulations 2002;  
The Control of Noise at Work Regulations 2005;  
The Control of Substances Hazardous to Health Regulations 2002 (as amended);  
Workplace (Health, Safety and Welfare) Regulations 1992;  
The Building Regulations;  
The Local Water authority Bye-laws;  
The Institute of Electrical Engineers Wiring Regulations B.S.7671:2008 (as amended);  
All relevant British /European Standards and Codes of Practice;  
and all other current statutory provisions, whether stated or not, for and during the execution of this contract.
- 31.3 The CA shall have power at any time to inspect, examine and test any part of the works or any materials intended to be used in or on the works either on the site or at any factory or workshop or other place where such parts or materials are being constructed or manufactured or at any place where the same are lying or from which they are being obtained, and the Contractor shall give all such facilities as the CA may be required to be given for such inspection, examination and testing.
- 31.4 If at the discretion of the CA an independent expert is employed to make any such tests his charges shall be borne by the Contractor only if the test discloses that the said materials are not in accordance with the provisions of the Contract. The report of the independent expert shall be final and conclusive.
- 31.5 If any of the materials of the works are not in accordance with the provisions of the Contract the same shall at the cost of the Contractor, be replaced, rectified or reconstructed as the case may be and all rejected materials removed from the site.
- 31.6 The Contractor will deemed to have included within his price for all charges incurred by conforming to Part "P" of the Building Regulations and for providing electrical "Minor Works" certificates as required by BS. 7671:2008 IEE Wiring regulations. All "Householder" copies will be sent to the CA for inclusion on the house files.

**32. Defects After Completion**

- 32.1 Works arising from any failure or neglect on the part of the Contractor in the proper performance of the Order occurring before completion of the Works shall be made good by the Contractor at his own cost.
- 32.2 In case of default the Council may provide labour and/or material or enter into a Contract or Contracts to make good such defects and all costs and expense consequent thereon shall be borne by the Contractor and shall be recoverable from the Contractor by the Council.

**33. Use of Site and Facilities , Gas, Electric ,Water**

- 33.1 The Contractor and his employees shall be confined to the area(s) on the site allocated by the CA.
- 33.2 The Contractor shall not use the site for any purpose other than that of carrying out the works ordered.
- 33.3 The Contractor shall obtain the approval of the CA for the siting of any sheds, stores or other structures.
- 33.4 The Contractor shall prevent any trespass on any adjoining property.
- 33.5 The Contractor shall ensure that no steps, ladders or other plant shall be left accessible for unauthorised persons to enter the site and/or the buildings thereon.
- 33.6 The Contractor shall take all reasonable precautions during the progress of the works to prevent any damage to adjoining property or public or private roadways and to prevent materials, plant, rubbish, debris etc, collecting thereon.
- 33.7 The Contractor shall regulate the character of his transport, and so operate it as to ensure that no damage beyond fair wear and tear is occasioned thereby, and shall comply with the requirements of the CA as to routes to be traversed and limitations of weights, speeds and class of vehicles.
- 33.8 If the Contractor wishes to erect scaffolding on, or to make use of any adjoining property for any other purpose, he shall obtain permission from the owners and meet all charges in connection therewith including Party Wall etc Act 1996. He shall clear away at completion of his work or when directed and make good any damage to their satisfaction. Except as provided in the Conditions of Contract the Contractor shall be held responsible for any damage resulting from the works and he shall make good any such damage at his own expense.
- 33.9 The Contractor shall be responsible for and shall take every precaution to avoid any damage to equipment and/or property of the Council. He shall make good any such damage at his own expense.
- 33.10 The Contractor shall be responsible for ensuring that his employees do not dispose of dirty water down sanitary fittings.
- 33.11 The Contractor shall use clean, fresh water for the execution of the works, together with necessary receptacles and plumbing, alter as required and clear away at completion and make good all work disturbed.
- 33.12 The Contractor shall give due notice to the local water undertaker and shall pay all water charges incurred during the course of carrying out his duties under this contract
- 33.13 The Contractor will comply with the Water Supply (Water Fittings) Regulations 1999 and any subsequent amendments as they come into effect during the term of this contract.

**34. Security**

- 34.1 The Contractor may be given access passes, keys and entry codes when required by the CA in respect of premises with controlled door entry systems. In such circumstances, the Contractor shall be responsible for the security of such Locations and shall ensure that such Locations are properly locked both whilst the Service is being performed and after any part of the Service has been provided.
- 34.2 The Contractor shall issue to any of their employees who shall at any time have access to the Location, security passes in such form as the Council may from time to time determine and issue to the Contractor.
- 34.3 The Contractor shall be responsible for the safekeeping of any keys, access passes and entry codes, provided to them by the Council and shall only permit such keys, access passes and entry codes to be given to those of their employees whose names and addresses have been supplied to the Authority and then only to the extent required for the purposes of execution of the Contract. The Contractor shall ensure that the CA is informed immediately of the loss of any keys or access passes, or divulgence of access codes.
- 34.4 The Contract shall include the dismantling and refitting on completion, of security boards to windows and doors or other openings as necessary during the course of the works.

### **35. Watching, Lighting and Protection of the Works**

- 35.1 The Contractor shall provide all necessary protection of the site, the works and of materials and plant and all things on the site during the progress of the execution of the works and shall be solely responsible for, and shall take all reasonable and proper steps for protecting, securing, lighting and watching all places on or about the works and site which may be dangerous to his workpeople or to any other person whomsoever.
- 35.2 The Contractor shall keep the works clean and free from damage during the execution of the works, and provide all screens, stout clean dust sheets, tarpaulins, notices and cover-up and protect all work, floors, fittings and the like to the satisfaction of the CA.
- 35.3 The Contractor shall provide and maintain to the satisfaction of the CA such special protection as may be ordered by the CA and shall clear away when directed.

### **36. Existing Power Cables, Services, Drains Etc**

- 36.1 The Contractor shall exercise particular care to avoid damage to, or any unauthorised interference with, the working of buried, hidden and visible mains and services (i.e. gas, water, electricity, telephones, buried cables or sewers, drains and ditches etc) and associated brackets, posts, fittings, lagging etc.
- 36.2 The Contractor shall ensure that his employees are aware of risk incurred when working near power lines and hidden cables. The Contractor shall provide close supervision to ensure that adequate precautions are taken to avoid contact by personnel with live conductors.
- 36.3 The Contractor shall not use or interfere with the operation of existing services or mains without the permission of the CA and the permission of any person so authorised to give that permission.
- 36.4 Any damage whatsoever to mains and/or services howsoever caused shall be reported by the Contractor to the CA who shall make such arrangements as are, in his opinion, necessary for the damage to be made good. The Contractor shall, subject to the provisions of the Conditions of Contract, be liable for the costs of such making good or repairs.

### **37. Removal of Rubbish**

- 37.1 The Contractor shall at all times keep the site free from all surplus materials, rubbish and debris arising from the execution of the works, and shall not dispose of such rubbish in containers or chutes belonging to the Council on any site where works are in progress and shall make his own proper arrangements for its removal.
- 37.2 The Contractor shall remove all rubbish clean all glass, door furniture, flooring and paving, remove all spots, smears, stains and other imperfections, generally touch up, make good and leave the whole of the works in a clean and perfect condition fit for use on completion.

### **38. Patent Rights**

- 38.1 All royalties, licence fees or similar expenses in respect of the supply or use for in connection with work executed or materials supplied or any invention, process, drawing, model, plan or information shall be deemed to be included in the prices payable in accordance with the Conditions of Contract.
- 38.2 The Contractor shall indemnify the Council from and against all claims, proceedings, damages, costs and expenses which may be made or brought against the Council to which the Council may be put by reason of such supply or use:
- 38.2.1. Provided that where such supply or use has been necessary in order to comply with any order given by the CA under the Contract, and royalty, licence fee or similar expense payable by the Contractor in respect of such supply or use and not provided for or reasonably incurred by the Contractor in compliance with the Order of the CA.

### **39. Agency**

- 39.1 Neither the Contractor nor its employees shall in any circumstances hold itself or themselves out as being the employee or agent of the Council otherwise than in circumstances expressly permitted by these Conditions.
- 39.2 Neither the Contractor nor its employees shall in any circumstances hold itself or themselves out as being authorised to enter into any Contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.
- 39.3 Neither the Contractor nor its employees shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any bye-law or regulation of any kind.

### **40. Parking**

- 40.1 The Contractor's vehicles shall not be parked where they are likely to cause an obstruction. The Contractor shall obtain from the Council all necessary permits for parking of the vehicles on estates. The Council will only grant permits for the Contractor's vehicles that will be used for the execution of the Contract. All permits will expire at the end of the Contract Period or upon determination earlier under Conditions of Contract clauses 58 and 59.

### **41. Advertisements**

- 41.1 The Contractor shall not display advertisements on the site nor permit advertisements to be displayed without the **written authority of the CA.**

### **42. Statutory Obligations**

- 42.1 The Contractor shall comply with, and give all notices required by and shall pay and indemnify the Council against liability in respect of any fees or charges (including any Rates or Taxes) legally demanded under any Act of Parliament, or any regulation or bye-law of any local authority or of any statutory undertaker which has any jurisdiction with regard to the works or with those systems the same are or will be connected.

### **43. Precaution against Fire and Other Risks**

- 43.1 The Contractor shall take all reasonable precautions to prevent loss or damage from any of the accepted risks, and to minimise the amount of any such loss or damage caused by a servant of the Contract. The Contractor shall comply with the Standing Fire Orders of the relevant site and with such instructions to this end as may be given to him from time to time in writing by the CA.
- 43.2 The Contractor shall strictly comply with any statutory regulations that govern the storage of explosives; petrol, gases, or other materials brought to the site.
- 43.3 The Contractor shall comply with the requirements of the CA and/or the Regulations in force on any Estate with regard to fire hazards however present e.g. flame producing apparatus, inflammable vapours and substances. Only skilled work-persons shall use blowlamps or other

flame-producing apparatus. The Contractor shall ensure that buckets of sand, fire resistant cloths or blankets and, where applicable, water for fire extinguishing purposes, shall be readily available.

#### **44. Damage to Plant, Works and Buildings Etc**

- 44.1 All plant, temporary buildings, equipment and things on the site provided by or on behalf of the Contractor for the construction of, but not for incorporation in the works shall stand at the risk and be in the sole charge of the Contractor. The Contractor shall be responsible for, and with all possible speed make good any loss or damage thereto arising from any cause whatsoever, including the accepted risks.
- 44.2 The Contractor shall (unless the CA shall issue an Order to the Contrary) with all possible speed, make good any loss or damage arising from any cause whatsoever occasioned to the works including all furniture, fixtures, fittings, decorations, or third party personal effects or damage to any premise(s) placed at the disposal of the Contractor for the purposes of the Contract, or to materials or things on the site provided for incorporation in the works (including materials and things provided by the Council) and shall notwithstanding such loss or damage, proceed with the execution and completion of the works in accordance with the Contract.
- 44.3 In the event of the Contractor failing to take action within 28 days in respect of making good any loss or damage described in Conditions of Contract clause 44.2 to the satisfaction of the CA, the CA may after notification in writing to the Contractor giving fourteen days notice, make such arrangements to determine liability for the loss or damage suffered by the Council or a third party as may be, in his judgement, proper to rectify such loss or damage occasioned by the act, default or negligence of the Contractor and shall notify the Contractor as soon as practicable and what action, if any, was taken because of the default and to provide full details of any costs arising including the use of an independent Technical Consultant or Claims Assessor. The Council in the event of the CA taking action in accordance with this Condition shall be entitled to recover such sums paid from the Contractor.
- 44.4 This remedy is over and above the remedies available to the Council under Conditions of Contract clauses 58 /59
- 44.5 The costs of making good such loss or damage shall be wholly borne by the Contractor save that:
- 44.5.1 Where the loss or damage is wholly caused by the neglect or default of a servant of the Council acting in the course of his employment of such, the Council shall pay the loss or damage, and where it is partly caused by such neglect or default the Council shall pay the Contractor such sum as is proportionate to that servant's share in the responsibility for the loss or damage.
- 44.5.2 Any such sum payable by the Council under this Condition shall be ascertained in the same manner as a sum payable in respect of an order under the Contract.

#### **45. Injury to Person: Loss of Property**

- 45.1 This Condition applies to any personal injury or loss of property (not being a loss of property to which Conditions of Contract clause 44 applies) which arises out of or in any way in connection with the execution or purported execution of the Contract.
- 45.2 Subject to the following provisions of this Condition the Contractor shall:
- 45.2.1 Be responsible for and reinstate and make good to the satisfaction of the Council or make compensation for any loss of property suffered by the Council to which this condition applies;
- 45.2.2 Indemnify the Council and employees of the Council against all claims and proceedings made or brought against the Council or employees of the Council in respect of any personal injury or loss of property to which this Condition applies and against all costs and proceedings reasonably incurred in connection therewith, save where such injury or loss occurs as a result of the negligence of the Council;

- 45.2.3 Indemnify the Council against any payment by the Council in order to indemnify in whole or in part a employee of the Council against any such claim, proceedings, costs or expenses; and
- 45.2.4 Indemnify the Council against any payment by the Council to a Council employee in respect of loss of property to which this Condition applies suffered by that employee of the Council and against any payment made under any scheme operated by the Council in connection with any personal injury to which this Condition applies suffered by any employee of the Council, or their families, or dependants during or in respect of sickness, injury or disablement suffered by such employee.

#### **46. Insurance Against Injury to Persons and Property**

- 46.1 Without prejudice to his liability to indemnify the Council under Conditions of Contract clauses 44 and 45 hereof, the Contractor shall maintain such insurance as is necessary to cover the liability of the Contractor under the said Conditions of Contract clauses 44 and 45.
- 46.2. The Contractor shall produce for inspection the relevant policy or policies of insurance, together with the receipts in respect of premiums paid under such policy or policies as and when required so to do by the Council, provided always that as and when may be reasonably required by the Council the production by the Contractor of a current certificate of insurance from the company or firm which shall have issued the policy or policies aforesaid shall be a good discharge of the Contractor's obligation to produce the policy or policies and the receipts in respect of premiums paid.
- 46.3 Should the Contractor make default in insuring or in continuing to insure as provided in Conditions of Contract clause 46.1 of this condition, the Council may itself insure against any risk with respect to which the default shall have occurred and may deduct a sum equivalent to the amount paid in respect of premiums from any monies due to or become due to the Contractor.

**47. Health and Safety and Welfare Measures**

- 47.1 The Contractor throughout the performance of works under this Contract, shall comply with all relevant Acts of Parliament, Statutory Instruments, Codes of Practice and all legislation connected thereto or made thereunder including any statutory modifications or re-enactments.
- 47.2 The Contractor shall provide a copy of its Health and Safety at Work Policy. The Contractor shall review its Health and Safety Policy and Safe Working Procedures as often as may be necessary and in the light of changing working practices, and shall provide the Council with any revisions as and when they occur.
- 47.3 The Contractor shall adopt safe methods of work for all operations coming within the scope of works outlined in this Contract, or any associated operations, in order to protect the health and safety of its own employees, sub-contractors or other employees, including the Council's employees and all other persons including members of the public.
- 47.4 The Contractor shall, upon commencement of the Contract, give the CA the name of its Health and Safety Officer responsible for Health and Safety during the Contract. The Contractor shall inform the CA of a change of their Health and Safety Officer.
- 47.5 The Contractor shall have full regard for the safety of all persons employed on or affected by the works (including the Public, residents, occupants and the Council's personnel) and shall keep all sites, depots, plant, vehicles and machinery (so far as the same is under the Contractor's control) in an orderly state appropriate to the avoidance of danger to such persons and shall inter alia in connection with the works provide and maintain at its own cost all lights, guards, fencing, working signs and watching when and where necessary or required by the CA, the Council's Safety Officer, or by any competent statutory or other authority for the protection or for the safety and convenience of the Public or others.
- 47.6 The Council's Health and Safety Officer, or other nominated person, shall be entitled at any time, during the Contract and with the full authority of the CA, to:
- 47.6.1 Attend at the Contractor's Registered Office, Principal Place of Business, or any other premises connected with the execution of the works to inspect the Contractors Health & Safety Policy, Accident Book and files of incidents connected with the works.
  - 47.6.2 To inspect the Contractor's vehicles plant, tools, apparatus at any time;
  - 47.6.3 To speak with the Contractor's employees on matters relating to Health and Safety;
  - 47.6.4 To inspect, without notice, works in progress;
  - 47.6.5 To accompany the Contractor's employees in execution of the works; and
  - 47.6.6 To direct the Contractors employees or agents as to any breaches of Health and Safety in the execution of works or the supervision of employees,
- without prejudice to, the Contractor, its employees, sub-contractors or Agents, duties and responsibility under the Health and Safety at Work etc. Act 1974 and Construction (Design and Management) Regulations 2015 or regulations or related orders.
- 47.7 The Contractor will not be entitled to seek extra cost if work programmes are affected by the presence of the Council's Health and Safety Officer or nominated person, nor will extensions of time be granted if works are suspended due to Health and Safety breaches.

**Clothing, Footwear and Apparatus**

- 47.8 Where the nature or the place of any duties, upon which the Contractors operatives (including agents and sub contractors) will be engaged in the provision of the Contract, make the wearing of any special or protective apparatus, clothing or footwear necessary as appropriate, the Contractor will provide and will ensure their operatives (including agents and sub contractors) wear such apparatus, clothing or footwear.

47.9 Where the Council's policies, rules, procedures or standards require special or protective, apparatus, clothing or footwear to be worn, the Contractor will ensure that the clothing, footwear or apparatus is provided for and worn by their directly employed operatives (including those holding self-employed Tax Certificates) and require their agents or sub contractors to do the same. Such special or protective apparatus, clothing and footwear shall be maintained and replaced as necessary by the Contractor.

47.10 Asbestos

47.10.1 The Council, where Asbestos is known to be in a property that is the subject of works under this contract, will notify the contractor of the areas where it is likely to be found.

47.10.2 Should the contractor at any time during the execution of any order encounter or suspect the presence of asbestos in any form they are to immediately contact the CA, and request his/her direction.

47.11 Hazardous Substances

The Contractor shall provide the CA with all necessary information in writing on substances used in connection with the works, on hazards arising therefrom and on precautions to be taken to reduce and eliminate such hazards. Including assessments made under the Control of Substances Hazardous to Health Regulations 2002. The CA shall inform the Contractor of Hazardous Substances which are known or suspected to be on site or at a location where work is to be undertaken which may affect the Health and Safety of its employees. The CA reserves the right to restrict, alter or substitute the use of any such substance.

**48. Race Relations Act 1976 and Equal Opportunities**

48.1 The Contractor shall, in so much as this condition is allowed by the Local Government Act 1988, comply with the Equality Act 2010, Race Relations Act 1976 and Race Relations (Amendment) Act 2000, together with:

48.1.1 Any act, rule, statement, code of practice, manual or other instrument or document amending or replacing the foregoing enactment; and

48.1.2 Any other statute, statutory instrument, rules, regulations, order, directions, byelaws or other instrument having the force of law, any rule of law, and any contractual obligation other than obligations arising from contracts between the Contractor and his employees (whether owed to the Council under this or any other Contract or to any other person other than his employees), for preventing unlawful discrimination (including victimisation) on the grounds of race, creed, gender.

48.2 The Contractor shall give to the Council such information, such access to documents and such copies of documents as the Council may require in order to satisfy himself as to the Contractor's compliance with the foregoing sub-clauses.

**49. Commitment to Customer Care and 'Disclosure & Barring Service' checks**

49.1 The Contractor is to adopt the Tendring District Council Customer Care Standards, as detailed in Appendix K. The contractor is to allow for all costs associated in operative training in connection with such customer care issues.

49.2 The Contractor is to also allow for all costs that may be incurred, or are associated with, the monitoring and reporting of customer complaints; including any follow-up action that may be required. As such, the Contractor is to deal with all customer dissatisfaction issues by resolving the issue(s) directly with the Tenant.

49.3 At the time of submitting a tender, the Contractor is to also provide the contract-specific monitoring procedures that the Contractor would be implementing in respect of customer care, should the Contractor be awarded the contract. The Contractor is to adopt a pro-active approach to seeking out and acting upon customer feedback. Upon completion of each service, the Contractor shall hand to the tenant, a copy of the Council's gas servicing satisfaction survey and a pre-paid reply envelope for its return.



49.4 The Contractor is to ensure and allow for **all** personnel employed in tenant's homes and on site being checked via, and to receive satisfactory approval from, the Disclosure and Barring Service (DBS). This includes any sub-contractors employed on the contract. The Contractor shall ensure that a "standard" DBS check is undertaken of all operatives prior to working on the contract and at least once every two years thereafter. The Contractor will provide confirmation of this to the CA on an annual basis. The cost of undertaking DBS checks shall be deemed to be included within the Contractors cost of providing labour. No person who has not been given "standard" clearance by the DBS shall be employed in tenant's property.

## 50. Good Practice Requirements

50.1 When employed by the Employer, the Contractor is required to follow certain practices, which the Employer considers fundamental to a quality service. These practices include:

- i) Being prompt when an agreed time has been organised to have works undertaken;
- ii) Not smoking in tenants homes;
- iii) Not playing radios in tenants homes;
- iv) Always using dust sheets where mess is likely to result from the works;
- v) Always leaving a calling card if the tenant is not in when access required;
- vi) Always showing identification cards without being requested to do so before seeking entry for the first time;
- vii) Being courteous to tenants;
- viii) Never using bad language;
- ix) Always clearing up any mess left as a result of the works carried out;
- x) Not using any of the tenants facilities without their prior permission;
- xi) Taking all reasonable steps to ensure the security of the tenant's property and possessions.

## 51. Corruption

51.1 The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment, under this or any other contract with the Employer if, in relation to this or any other such contract, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916, or where the Employer is a Local Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.

## 52. Dismissal of the Contractor's Employees

52.1 The CA shall have power to require the Contractor, subject to compliance with any statutory requirements, immediately to cease to employ in connection with the Contract and to replace any foreman or person below that grade whose continued employment thereon is in the opinion of the CA undesirable.

## 53. Complaints

53.1 The Contractor shall investigate all complaints received by the Employer, details of which shall, as a general rule, shall be forwarded to the Contractor by the Employer within two working days of receipt and implement a system to receive, and record in a format approved by the Employer and investigate complaints which are applicable to the provision or non-provision of the services.

- 53.2 For the avoidance of doubt, a complaint will be deemed to include any matter to which a complainant refers which, in the opinion of the Employer, is directly or indirectly attributable to the performance or the Contract by the Contractor.
- 53.3 For the avoidance of doubt, a written response in typescript to a complainant will be required from the Contractor in all cases where the complaint has been made in writing, and also to verbal complaints or the like where in the opinion of the Contractor, the nature of the complaint or query renders a written response appropriate.
- 53.4 As a minimum a written reply to each complainant shall include, an explanation for the circumstances or events that gave rise to the complaint and or the failure to perform the works or services in accordance with the terms of the contract, the action taken. When upon investigation a complaint is found not to be justified, the Contractor shall reply accordingly and notify the Employer.
- 53.5 Any failure to respond to a complaint or failure to respond within the Employer's Published Performance Indicator time scale, and / or failure to undertake any remedial work within the stated time scale, (see Conditions of Contract clause 16) shall be deemed to be a failure to perform the works or services for which the Employer will deduct Liquidated and Ascertained Damages for the amounts he has compensated the tenants, for the poor service received from the Contractor.
- 53.6. The cost of receiving, investigating, recording, replying and rectifying all complaints or the like howsoever received by the Contractor will be deemed to be included within the contract sum and the Contractor shall not be entitled to any additional payment for receiving, recording, investigation, replying to and rectifying complaints whether justified or not.
- 53.7. The Contractor shall provide on a quarterly basis a written statement with the information of the percentage notification of completed works with the 'right to repair' Citizen Charter Scheme.

#### **54. Payments and Accounts**

- 54.1 Payments to the Contractor for repairs work will be by way of monthly payments, in arrears, over the Contract Period, upon application for interim payments, which will be based on the tendered Schedule of Rates prices and adjusted for additions or omissions (Conditions of Contract clause 6)
- 54.2 Payments to the Contractor for annual servicing will be made on production of a Gas Safety Record complete with the Tenant's signature and date and based on the Schedule of Rates / number of council owned appliances serviced, plus any other documentation as required by the CA.
- 54.3 Each application for interim payments submitted in relation to the works as required by this Contract, will show the following information:
- The Area and buildings to which the invoice relates
  - The period to which the invoice relates (i.e. Month 1 January, Month 2 February etc)
  - An itemised Schedule of Premises serviced / safety checks undertaken
  - The Gas safety / Landlords safety records
  - The smoke alarm testing record
  - The carbon monoxide alarm testing / installation record
  - IEE Regulation electrical works Part P certificate (when applicable)
  - Copies of priced variations showing all additions/omissions authorised by the CA
  - Copy of fax sheet/e-mail as required by Conditions of Contract clause 17.5
  - Deduction of retention
  - Payment/deduction of compensation amounts
- or such other information as may be required by the CA
- 54.4 A retention of 5% of the last monthly valuation account of the contract or £15,000.00 whichever the greater will be held. Payment will be made in full, less any retention, within 14 days from the agreement of the application.

- 54.5 The retention will be released following authorisation of the account by the Councils Internal Audit or twelve month period after contract completion whichever is the shorter period.
- 54.6 Any sum due to the Contractor under the Contract shall be exclusive of value added tax and the Employer shall pay to the Contractor the value added tax properly chargeable by the Commissioners of Customs and Excise on the supply to the Employer of any goods and services by the Contractor.
- 54.7 It is the Contractor's responsibility to ensure that interim applications, invoices and the final account is sent to the Council. The Council at the commencement of the Contract shall notify the Contractor where he is to send the accounts for works. For the purposes of the Contract all accounts will be sent to the CA by first class mail or by hand, addressed to the CA or nominated officer notified to the Contractor.
- 54.8 The Council shall inform the Contractor, upon commencement of the Contract, the name of its representative, who will act as Financial Controller during the period of the Contract, to which the Contractor may make representation on matters affecting the payment of accounts. The Contractor in turn shall inform the Council of his representative in accordance with this condition. Both the Council and the Contractor will notify each other should either representative change during the Contract.

## **55. Accounts Disputed for Price or Workmanship**

- 55.1 Notwithstanding any other provision of this Contract, the CA may, at any time, where:
- 55.1.1 In his/her opinion the works have not been completed in accordance with the contract;  
or
  - 55.1.2 The amounts stated or calculations stated on a rendered application/invoice are not in accordance with the Contract; or
  - 55.1.3 There are operational matters on a specific application/invoice, or generally which the Contractor is not complying with;
- inform the Contractor by e-mail or by telephone and return to the Contractor the invoice with a note of the reason why the CA is not prepared to process the invoice with payment.
- 55.2 Where the CA has notified the Contractor of a dispute, the Council will be under no obligation to make payment, which is suspended until the dispute is resolved. Accounts resubmitted, whether varied or not, shall have shown on, or attached to, the history of submissions (stating the first invoice date, and number (if these change) as well as the date submitted to and when returned by the Council, the Contractor's response time etc.).
- 55.3 For the avoidance of doubt, applications for payment and invoices disputed for price and/or workmanship will not be paid and time will not run until the dispute is resolved, time being suspended. The payment period will resume once the CA accepts the Contractor's invoice provided always that the Council will be allowed time to make payment within the 14 days in accordance with the contract.
- 55.4 If the information is not in an agreed form this will delay the payment to the Contractor and time will not run until the application for payment and invoice is in an agreed form. For the avoidance of delay the Contractor should exercise due care in measuring the work and submitting information in an agreed form.
- 55.5 Arithmetical errors (including VAT and Scheduled Items Numbers) found on the application for payment or invoice will result in its return to the Contractor. When the payment application or invoice returned is resubmitted for acceptance, because of a calculation error, it shall have inserted information required by Conditions of Contract clause 55.2. Again time will not run for the purposes of payment until the error is rectified.
- 55.6 The agreement, by the CA, of the Contractor's calculations shall in no way affect other provisions of the contract, which may be enforced by the Council in respect of remedies against the Contractor for default or failure with regards to the works.

- 55.7 If the Final Account is returned more than once, the Council shall be entitled to charge the Contractor its reasonable administrative charges calculated at £25.00 per hour.
- 55.8 If a dispute is not resolved between the parties, the CA may refer the matter, with the Contractor's consent, to the Assistant Head of Financial Services (Audit & Exchequer) for final adjudication. The said officer may designate a representative appropriate to the nature of the dispute to adjudicate. The CA and the Contractor shall provide such information as the said officer (or representative) may require to resolve the dispute. The said officer (or representative) shall consider the dispute by reference to the documents provided and shall notify his/her decision as soon as is reasonably practicable, dependent upon the nature of the dispute and volume of documentary evidence provided. This procedure is without prejudice to the party's entitlement to English Law but any decision shall stand on the record as the Council's position on the dispute.

#### **56. Overpayment and Contractor Recovery of Sums from the**

- 56.1 If it is discovered, at any time, that an application/invoice is not prepared in accordance with Conditions of Contract clause 54, which has resulted in an overpayment being made to the Contractor, in respect of any work done by him or alleged to have been done by him under the Contract, such overpayment shall be recovered by the Council from the Contractor.
- 56.2 In the event of any discovered overpayment, the Council, notwithstanding its entitlement under Conditions of Contract clause 58 shall be entitled to charge the Contractor 10% based on the corrected Final Account to defray any administrative overheads which are incurred by the Council.
- 56.3 Persistent overcharging shall entitle the Council to terminate the Contract forthwith and to claim from the Contractor extra expenses outlined in Condition 58 of the Conditions of Contract.
- 56.4 Whenever under the Contract any sum of money shall be recoverable from or payment by the Contractor such sum may be deducted from or reduced by the amount of any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other Contract with the Council.
- 56.5. Whenever under the Contract any sum of money shall be recoverable from, or payable by, the Contractor, such sum may be deducted from, or reduced by, the amount of any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other Contract with the Council.
- 53.6 For the avoidance of doubt the Council will apply sums owed by the Contractor against sums agreed as owing to the Contractor against the invoice which is subject to a dispute or by way of "set off" against the sums due on this or other Contracts the Contractor will have with the Council.

#### **57. STATUTORY TAX DEDUCTION SCHEME – Income and Corporation Taxes Act 1988**

- 57.1 In this clause "the Act" means the Income and Corporation Taxes Act, 1988; the "Regulations" means the Income Tax (Sub-contractors in the Construction Industry) Regulations 1985 S.I. No. Or any re-enactment or amendment or remaking thereof; "contractor" means a person who is a contractor for the purposes of the Act and the Regulations; "evidence" means such evidence as is required by the Regulations to be produced to a "contractor" for the verification of a "sub-contractor's" tax certificate; "statutory deduction" means the deduction referred to in section 559(4) of the Act or such other deduction as may be in force at the relevant time; "sub-contractor" means a person who is a sub-contractor for the purposes of the Act and the regulations; "tax certificate" is a certificate issuable under section 70 of the Act.
- 57.2 Any reference in this Condition to an Act or Regulation includes any relevant amendment thereto or re-enactment thereof.

Not later than 21 days before the first payment becomes due under Conditions of Contract clause 54, the Contractor shall either: -

- 57.2.1 Provide the Employer with the evidence that the Contractor is entitled to be paid without the statutory deduction, or

- 57.2.2 Inform the Employer in writing, and send a duplicate copy to the Contract Administrator that he is not entitled to be paid without the statutory deduction.
- 57.3. If the Employer is not satisfied with the validity of the evidence submitted in accordance with Conditions of Contract clause 57.2.1. thereof, he shall within 14 days of the Contractor submitting such evidence notify the Contractor in writing that he intends to make the statutory deduction from payments due under this Contract to the Contractor who is a "sub-contractor" and give his reasons for that decision. The Employer shall at the same time make the statutory tax deduction from any payment due.
- 57.4. Where Conditions of Contract clause 57.2.2. applies, the Contractor shall immediately inform the Employer if he obtains a tax certificate and thereupon Conditions of Contract clause 57.2.1 shall apply.
- 57.5 If the period for which the tax certificate has been issued to the Contractor expires before the final payment is made to the Contractor under this Contract the Contractor shall, not later than 28 days before the date of expiry either: -
- 57.5.1. Provide the Employer with evidence that the Contractor from the said date of expiry is entitled to be paid for a further period without the statutory deduction in which case the provisions of Conditions of Contract clause 57.3 hereof shall apply if the Employer is not satisfied with the evidence; or
- 57.5.2. Inform the Employer in writing that he will not be entitled to be paid without the statutory deduction after the said date of expiry.
- 57.6 The Contractor shall immediately inform the Employer in writing if his current tax certificate is cancelled and give date of such cancellation.
- 57.7. The Employer shall, as a "contractor" in accordance with the Regulations, send promptly to the Inland Revenue any voucher which, in compliance with the Contractor's obligations as a "sub-contractor" under the Regulations, the Contractor gives to the Employer.
- 57.8. The contractor will comply with any revisions, amendments and alterations to this act that will come into effect during the period of this contract

## **58. Default by the Contractor**

- 58.1 If the Contractor fails to perform any of their obligations under the Contract, then the CA shall be entitled to give the Contractor written notice clearly stating the ground(s) upon which the CA is dissatisfied with the works and the Contractor shall comply with the requirements of the said notice forthwith (or within such period(s) as the CA, at his/her sole discretion may allow).
- 58.2 If the Contractor fails to comply with any notice served in respect of Conditions of Contract clause 58.1, the Council after expiry, shall be entitled to make such arrangements that are proper for the completion of the work in all respects, (including defects liability).
- 58.3 For the purposes of Conditions of Contract clause 58 the Council shall be entitled to employ other Contractors to perform the contract, and shall be entitled to use all materials, plant etc. found on any site/premises.
- 58.4 Any extra expense reasonably incurred, including loss or damage claims from residents etc., and failing on the Council, by reason of any arrangements made by the CA, under this Condition, shall be recoverable from the Contractor and where such arrangements have involved the use of labour or materials available to the Council. Such expense shall include the cost of labour and/or materials, and an additional charge consisting of such percentages of that cost to cover establishment and superintendents charges as may be determined by the Council whose decisions to the making of such additional charge and to the amount thereof shall be final and conclusive.
- 58.5 Nothing contained in this Condition, or in any reference to it in any other Condition, shall be construed as prejudicing or affecting the exercise by the Council, of any rights or remedies in respect of failure of the Contractor to carry out the work, or to supply day labour or materials or, in respect of any other breach, by the Contractor, of its obligations under the Contract as it would be entitled to exercise if this Condition were not contained herein.

- 58.6 Should the CA elect to use this Condition, notwithstanding the Council's entitlement to claim damages for breach of Contract, the Council will be entitled to recover from the Contractor by deduction, from monies due under this, or any other Contract, the following:
- 58.6.1 That any increase in costs resulting from the Contractor's default borne by the Council in engaging others to complete the works
  - 58.6.2 A standard administrative charge of £20.00 for service of the notice and administrative charges calculated at £25.00 per hour;
  - 58.6.3 Any loss of revenue and/or cost of temporary accommodation for domestic purposes arising from the failure to complete and hand over to the Council void properties or premises temporarily vacated or rents reduced by reason of the works.
  - 58.6.4 Compensation paid to a Resident arising from the default of the Contractor (see Conditions of Contract clauses 14, 35 and 44).
  - 58.6.5 Settlement of claims made by a resident, or third party, actioned under Conditions of Contract clause 14.
- 58.7 The recovery of damages from the Contractor, which is debt due to the Council, will be in accordance with Conditions of Contract clause 56 and will be deducted from accounts that have been agreed by the CA for payment under this or any other contract by way of "set off" for sums due to the Council from the Contractor. In the event of their being, insufficient sums held, the balance shall be recovered as a civil debt.

## **59. Termination of the Contract**

- 59.1 The Council shall be entitled, upon notice (such notice not being unreasonably or vexatiously issued) in writing under the hand of the CA in collaboration with the Solicitor to the Council, to terminate the contract and to recover any loss, damage or cost, arising from such termination, if the Contractor:-
- 59.1.1. Being an individual or where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order or administration order made against him or shall make any composition or arrangements with or for the benefit of his creditors, or shall purport to do so, or an application shall be made under any Bankruptcy Act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him on behalf of his creditors; or
  - 59.1.2. Being a Company, shall pass a resolution, or the court shall make an order that the Company shall be wound up, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order.
  - 59.1.3 Shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining or execution of the Contract or any other Contract with the Council, or for showing or forbearing to show any favour or disfavour to any person in relation to the Contractor or any other Contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without knowledge of the Contractor), or if in relation to any Contract with the Council, the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
  - 59.1.4 Commits a breach of its obligations under the contract
- 59.2 In the event of the contract being terminated under Conditions of Contract clause 59.1, the Council shall enter upon any site/premises in the possession of the Contractor (including a Depot or premises handed over to the Contractor).

The Council may elect to perform the works itself or may employ another Contractor to perform the work from the date of service of the notice, provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.

- 59.3 The Council shall as soon as maybe practicable after termination determine after such investigation or enquiries as it may think fit to certify what amount (if any), at the time of termination, had been reasonably earned by or would reasonably accrue to the Contractor in respect of the work then actually done by them, to the quality and to the standard of the Contract and to the satisfaction of the CA, under the Contract.
- 59.4 If the Council terminates the Contract under this Condition it will not be liable to pay to the Contractor any money, on account, until a statement of account has been prepared, taking account of the expiration of the Contract Period and thereafter until the cost of completion and maintenance charges for delay in completion (if any) and all other expenses incurred by the Council have been ascertained and the amount thereof certified.
- 59.5 The Contractor (or the liquidator if a company) shall then be entitled to be paid the amounts (if any) as the Council has certified would have been due to them upon due completion by them after deducting the sums owed to the Council arising from the Contractor's breach. But if such amount shall exceed the sum which would have been payable to the Contractor, on due completion by it, the Contractor shall, upon demand, pay to the Council the amount of such excess which if unpaid shall be recovered as civil debt (or lodge a claim with the liquidator if a company).
- 59.6 For the purpose of this condition, termination of the Contract will not normally happen where default is on a single order and where monetary restitution is appropriate (see Conditions of Contract clause 58). The Council will immediately determine the Contract if, on a single order, the Contractor has committed a flagrant breach of contract or gross act of negligence or that the default in carrying out any part of the works is fundamental to the performance of the Contract.

## **60. Arbitration**

- 60.1 All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract other than a matter or thing arising out of or relating to Conditions of Contract clauses 54 and 55 or as to which the decision or report of the Council or of any other person is, by the Contract, expressed to be final and conclusive, shall, after written notice by either party to the Contract, be referred to a single arbitrator agreed for that purpose, or in default of such agreement to be appointed at the request of the Council by the President or a Vice-President of the Royal Institute of Chartered Surveyors
- 60.2 Unless the parties otherwise agree such reference shall not take place until after the termination or determination of the Contract or abandonment of the works.
- 60.3 Such reference shall be a submission to arbitration under the Arbitration Act 1950, or any statutory modification or re-enactment thereof.

## **61. Review of Contract Service**

- 60.1 The Council from time to time will undertake the assessment and performance of the works under this Contract and this will involve consultations and consumer surveys with resident community groups, experts and interested parties as required. In this regard the Contractor shall attend any meetings convened by the CA for the Council's benefit or with tenant organisations / Careline and shall supply all operational resource and performance related information used in carrying out works for this Contract as requested from time to time.

## **62. Contractual Documents and Variations**

- 62.1 Except as otherwise expressly provided, the several documents comprising the contract are to be taken as mutually explanatory of one another and in the case of ambiguities or discrepancies the same shall be explained and adjusted by the Council who shall thereupon issue to the Contractor the appropriate instructions in writing and the Contractor shall carry out and be bound by such instruction.

62.2 Notwithstanding any other of the conditions herein no deletion from, addition to or variations of these conditions or on Contractual Documents, including the Schedule of Rates, shall be valid or have any effect except by the consent of the Council.