

CLIENT'S REQUIREMENTS

**CONTRACT CONDITIONS &
PRELIMINARIES**

Document C



CLIENT'S REQUIREMENTS – CONTRACT CONDITIONS AND PRELIMINARIES

CONTENTS

1. FORM OF CONTRACT
2. SERVICE PROVIDER'S OBLIGATIONS-CONTRACT CONDITION
3. UNDERTAKING OF WORKS
4. WORKS ORDERS
5. INFORMATION TECHNOLOGY AND COMMUNICATIONS
6. SERVICE PROVIDER'S OBLIGATIONS-PRELIMINARIES
7. HOURS OF WORK/OUT OF HOURS WORKING
8. WORKING IN AND ADJACENT TO OCCUPIED AND UNOCCUPIED PREMISES
9. APPOINTMENTS, ACCESS AND ABORTIVE CALLS
10. PAYMENT OF NON SCHEDULE OF RATES ITEMS
11. PLANTS, TOOLS AND VEHICLES
12. MATERIALS, GOODS AND WORKMANSHIP
13. COMPETENT MANAGEMENT/SUPERVISION
14. ASSIGNMENT AND SUBLETTING
15. PAYMENT AND INVOICES
16. STATUTORY OBLIGATIONS
17. INSURANCES
18. LIQUIDATED AND ASCERTAINED DAMAGES AND SUMS RECOVERABLE FROM THE CONTRACTOR
19. DETERMINATION, TERMINATION AND BREAK PROVISIONS
20. RESOLUTION OF DISPUTES, ADJUDICATION AND ARBITRATION
21. ADMINISTRATION OF THE WORKS
22. CODE OF CONDUCT

- 23, SAFETY HEALTH AND WELFARE
- 24. SCAFFOLDING, MEANS OF ACCESS ETC
- 25 SCAFFOLDING - CODE OF CONDUCT

1. FORM OF CONTRACT

1.1 Sufficiency of Information

The Service Provider shall be deemed to be satisfied before submitting their tender as to the accuracy and sufficiency of their offered Rates and/or Prices which shall cover all their obligations and liabilities under the Contract.

The Service Provider shall be deemed to have obtained all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect their ability to undertake the Works required by the Contract.

All costs and expenses incurred by the Service Provider in fulfilling all their obligations, accepting all liabilities, contingencies and risks in undertaking the Works under the Contract shall (unless expressly stated and/or be otherwise provided for in the Contract) be deemed to be included in the Service Provider's tender..

1.2 Documents Mutually Explanatory

Except as otherwise expressly provided the Contract Documents are to be taken as mutually explanatory of one another. In case of any ambiguities or discrepancies the same shall be explained and adjusted by the CR who shall thereupon issue to the Service Provider appropriate instructions in writing and the Service Provider shall carry out and be bound by such instructions.

1.3 Variation of Client's Requirements

No deletion from, addition to or variation of the Client's Requirements shall be valid or of any effect unless agreed in writing and signed by the parties.

Where there is any inconsistency between the Client's Requirements and any provision in any other of the Contract Documents, the Client's Requirements shall prevail unless decided otherwise by the Clients Administrator and notified to the Service Provider in writing.

2. SERVICE PROVIDER'S OBLIGATIONS

2.1 The Service Provider shall carry out and complete the Works in accordance with the frequencies specified and, where appropriate, within the relevant Specified Period

- with due diligence,
- in a good workmanlike manner,
- to a high standard in accordance with the Contract
- using materials and workmanship of the quality and standards specified,
- approval of the quality of materials or of the standards or workmanship shall be to the reasonable satisfaction of the Clients Administrator.

- 2.2 The Service Provider shall, immediately after award of the Contract, prepare and submit to the Clients Administrator their proposed annual programme for Scheme visits to undertake Routine Maintenance at the intervals required by the Client. The Service Provider's performance in meeting such programme to the required quality will be monitored regularly by the Clients Administrator throughout the duration of the Contract and the results utilised for the purpose of the Annual Performance Review under Condition .
- 2.3 The Service Provider shall provide documentation to be completed by its staff when arriving and leaving the Clients property. The Service Provider will also provide a report document for its staff to leave exact details of work issues and services undertaken and for the Client to leave instructions for additional work to be completed.
- 2.4 The Service Provider shall at all times comply with the Quality Standards and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Contract, the Service Provider shall agree the relevant standard of Services with the CA prior to execution, and shall execute the Contract with reasonable care and skill and in accordance with good industry practice. ["Quality Standards" means the quality standards published by the British Standard Institute, the International Organisation for Standardisation or any other equivalent body, that a skilled and experienced operator engaged in the same type of industry or business as the Service Provider would reasonably and ordinarily be expected to comply as supplemented by the Specification.
- 2.5 The introduction of new methods or systems which impinge on the provisions of the Works shall be subject to prior approval.

3. UNDERTAKING OF WORKS

3.1 The Service Provider:

- is advised that certain work of a specialist nature is likely, but not guaranteed, to be the subject of separate orders outside the scope of the Contract.
- In certain circumstances the Client may require the Service Provider to undertake certain Works in other Areas administered by the Client to that for which the Contract has been awarded save that when such Work is so ordered the Service Provider shall carry out and complete the Works in accordance with the Contract and at the Service Provider's accepted tendered rates and percentage adjustment.

The Client:

- may during the period of the Contract require other persons or Service Providers to carry out other works concurrent and the Service Provider shall at all times facilitate and permit such work to be executed without hindrance. In any such event the Service Provider shall not be responsible for any damage caused to his Works by such other works, persons or contractors
- will allow to the Service Provider a minimum value for any Works Order to be issued under the Contract as stated in the Contract Details, the minimum Works Order value is **exclusive** of the Contractor's tendered percentage adjustment as stated in the Price Framework and is exclusive of VAT.

4 Communications

4.1 The Service Provider shall;

- ensure that the supervisor in charge can be contacted by means of mobile phone or other form of communication approved by the Client during all normal working hours and that the Service Provider can contact their operatives during all normal working hours.
- shall ensure that his communication facility shall be located within or adjacent to the area of the Client for the duration of the Contract. The costs of complying with this requirement are deemed to be included in Service Provider's tender.

5. SERVICE PROVIDER'S OBLIGATIONS

5.1 Completion of the Works

The Service Provider:

- is not to remove any item except the rubbish and materials etc, accumulated or supplied as part of the carrying out the works and to indemnify the Client for any other items removed from the premises except with express consent given by the Client.
- must acquaint and satisfy themselves with all conditions likely to affect the execution of any of the scheduled works, including the types, construction and location of the dwellings and buildings, as no claim by the Service Provider for additional payment shall be allowed on the grounds of any misunderstanding, or ignorance due to lack of knowledge of local conditions, regulations or requirements on which the scheduled works are to be executed.
- shall at all times employ sufficient labour and supply suitable and sufficient plant and equipment to ensure that all Work are started and completed within the Response Repair Period (which commences from the time of the issue of the Works Order) as stated in the Contract Details to the entire satisfaction of the CA.

The Client

- reserves the right to withdraw any Works Order at any time.
- in certain situations and especially in cases of Work required to be attended, made safe and/or completed within 24 hours i.e. Emergencies.
 - may, give the Order by telephone and the Service Provider will commence the Works immediately.
 - will in all such cases issue a Works Order in respect of all such Work issued by means of an oral instruction.
- will, providing such Work is not as a result of any default of the Service Provider, reimburse the Service Provider for undertaking these Works at the rates contained in the Schedule of Rates together with the Percentage A in respect of such work to be executed during normal working hours These rates are deemed to cover all costs incurred, and the Client will not entertain any claim for any additional costs incurred whatsoever.

5.2 Vehicles Place at Work

Since September 2003, cars and commercial vehicles are now considered as a place of work. This has a number of implications for the Client.

To avoid any form of liability, the Service Provider must ensure that any vehicle used in the course of its business is roadworthy (with a valid MOT certificate, if appropriate), fit for purpose, taxed and appropriately insured and that the Service Provider and its employees have the appropriate driving licences.

The police, in conjunction with the Health and Safety Executive (the HSE), are now frequently treating road traffic accidents in the same manner as the HSE treat an accident in the workplace. This means there is a far more detailed investigation into the cause of an accident with, where appropriate, a report to the HSE, if the driver(s) are driving in the course of work on behalf of their Client.

Responsibility is therefore placed on the Service Provider and its employees to ensure compliance with the matters set out in the Vehicles Place at Work Guidelines.

5.3 Contracts (Rights of Third Parties) Act 1999

The Contract does not in anyway whatsoever entitle a person who is not a party to the Contract (including, without any limitation, any employee, officer, agent, representative, or subcontractor of either the Client or the Service Provider) to enforce any term of the contract, which expressly, or by implication, confers a benefit on him pursuant to the Contract (Rights of Third Parties) Act 1999, without prior agreement in writing of both parties.

5.4 Monthly Reports

The Service Provider shall:

- generally provide to the Client a monthly report detailing all routine visits, emergency Works Orders and recall requests attended to during the previous Month. The report shall be issued on the day immediately the end of the month or after Bank or Public Holidays where such days fall on a Bank Holiday. The report shall include all Works attended to during the previous Month up to midnight on the day immediately preceding issue of the report.
- transmit the monthly reports by e-mail, to be received by the Client no later than 10.30am on a working day.

The Client and the Service Provider will finalise and agree the format/content of monthly reports following award of Contract.

6. HOURS OF WORK/OUT OF HOURS WORKING

6.1 Hours of Work (Working Days)

The Service Provider:

- will generally carry out Work between the hours stated in the Contract Details.
- work before or after these times may only be carried out with the prior approval of the Client, and the resident in respect of occupied properties. Any works undertaken after the time stated in the Contract Details are to be on a non-intrusive nature.
- is to note that the Client will not be liable for extra payments of monies in the event of overtime worked.

6.2 **List of Authorised Officers**

The Client:

- will issue a list of Authorised Officers to the Service Provider before Commencement Date of the Contract. This list will be updated throughout the Contract Period to take account of changes in Authorised Officers of the Client.

The Service Provider:

- if he receives instructions/directions from persons not identified on the list of Authorised Officers should refer the matter to the Client for directions before commencing any Works.

7 **Protect Tenants' Property**

The Service Provider:

- shall endeavour to settle any claims for damage to any property directly with the Client or Clients staff.
- is to note that the minimisation and speedy resolution of complaints raised by Clients Staff will be a key performance indicator against which the Service Provider will be measured.

7.1 **Protection of Persons and Property**

The Service Provider:

- will take every precaution whilst carrying out the works to ensure the safety of the general public, the Client's staff and other persons likely to be affected by their operations, and in particular comply with the requirements of the following:

Office, Shops and Railway Act 1963,
Factories Act 1961,
Construction Regulation 1961, 1966 and 1996,
Health and Safety at Work Act 1974,
The Management of Health and Safety at Work Regulations 1992 etc.,

and any subsequent amendments and re-enactments and all other relevant legislation.

7.2 **Protection of Existing and Adjoining Building etc.**

The Service Provider:

- shall suffer nothing to be done that is liable to injure the stability of existing buildings or any portion, boundary walls, fences or railings.
- will be held responsible for all damage arising through carelessness or inadvertence in this respect.

7.3 **Liaison with Other Service Providers**

The Service Provider:

- is to note that other repair works may be carried out concurrently with the Contract and the Service Provider is to allow for working in conjunction with and liaising with the Client and any other Service Provider.
- is deemed to have included in his tender for any costs incurred in complying with this requirement.

8 Identification

The Service Provider:

- will supply to all personnel employed upon the Works including sub-contractors a form of identification card approved by the Client which will contain the following details:-
 - .1 Photograph of Operative
 - .2 Operative's name
 - .3 Service Provider's name, logo, address and telephone number
 - .4 Expiry date of card (which shall not be beyond the expiry date of the Contract)
- will be required to submit before the commencement of the Contract a list of their personnel to be used on the Contract together with their personal details and this list is to be updated when changes in staff arise.
- will be required to ensure that all identification cards so issued are returned to the Client on the expiration of the Contract or on the occasion of an operative leaving their employment.
- is to note that, all vehicles used by operatives employed by the Service Provider or sub-contractor's in carrying out the Works under this Contract shall clearly and permanently bear the **Service Provider's** logo and name on them irrespective of ownership.
- is to note that all the operatives employed by the Service Provider or sub-contractor's shall at all times wear clean workwear, clearly and permanently bearing the **Service Provider's** logo, name, address and telephone number on them. The workwear shall be to the approval of the Client
- is to note that persistent failure on the part of operatives and/or staff of the Service Provider and/or any sub-contractor to carry and show identification cards whilst engaged on the Works shall entitle the Client to terminate the Service Provider's employment under the Contract.

8.1 Disclosure and Barring Services

- 8.1.1 Where specified by the Client the supplier shall procure that in respect of all potential Staff or persons supplying any of the Services (each a **"Named Employee"**), before a Named Employee enters the Premises:-
- a. each Named Employee is questioned as to whether he or she has any convictions
 - b. the results are obtained of a check of the most extensive available kind made with the DBS Checks
 - c. a copy of the results of such checks are notified to the Buyer.

8.1.2 The Supplier shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a DBS check, is employed or engaged by the

Supplier or on the Supplier's behalf without the Client's prior Approval (such Approval is not to be unreasonably withheld or delayed).

8.1.3 The Supplier shall procure that the Client is notified of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Supplier (or any employee of a sub-contractor involved in the supply of the Services). The Parties agree that where such notification is made it shall be reasonable for the Client to withhold access to the Premises from the member of Staff concerned.

9. PAYMENT OF NON SCHEDULE OF RATES ITEMS

9.1 Where Schedule of Rates not Applicable

If any Work is ordered to be executed for which there are no tendered rates or prices, the value shall be based on:

- the items most nearly conforming with the description of the Work undertaken, or as may be agreed, or failing agreement the value determined by the Client.
- a quotation,

The Client:

- may, if it thinks fit, employ other service providers to execute such Work.
- reserves the right to delete items from the Schedule of Rates as is deemed appropriate and no claim for any additional costs arising from the deleting of such Items will be allowed by the Client.
- may require the inclusion of additional items within the Schedule of Rates. In such situations the Client will identify items and either pre-price these or request a price from the Service Provider for negotiation, agreement and inclusion in the Schedule of Rates.
- reserves the right to delete items from the scope of Work as is deemed appropriate and in respect of Routine Maintenance the tendered annual sum will be adjusted accordingly. No claim for any additional costs arising from the deleting of such scope will be allowed by the Client.
- may require the inclusion of additional items within the Scheme Lump Sum totals or in the Schedule of Rates. In such situations the Client will identify the items and either pre-price these or request a price from the Service Provider for negotiation and agreement.

In all cases, additional items shall be priced or be pre-priced at a comparable level with existing items in the Schedule of Rates.

In all cases the Client's decision on the prices will be final and the Service Provider will be duly bound to undertake and complete all such Works so ordered under the terms and conditions of the Contract.

10.0 PLANTS, TOOLS AND VEHICLES

10.1 The Contractor shall provide all necessary labour and shall erect maintain alter and adapt as necessary, dismantle and clear away on completion all materials layout, scaffolding tower hoists ladders cradles and other means of access plant pumping temporary sub-barriers and other matters and things as necessary which in the opinion of the Contract Administrator may be required for the proper safe and expeditious completion of the Work including the costs of all carriage and freightage and as required for inspection of the

Works by the Contract Administrator or his representative during progress and on completion.

12. COMPETENT MANAGEMENT/SUPERVISION

12.1 The Service Provider shall:

- ensure that a Contract Manager is appointed and empowered to act on behalf of the Service Provider and is contactable to the Client in person, throughout the period the Service Provider's is undertaking the Contract
- prior to the appointment of the Contract Manager, inform the Client in writing of details of its Contract Manager. The Service Provider shall also inform the Client in writing of any person(s) authorised to act as deputy for the Contract manager. The Service Provider may remove or replace the Contract Manager from time to time and must give written notice to the Client at the time of so doing.
- ensure that the Contract Manager informs the Client promptly and in writing of any instances of activity or omission on the part of the Client which precludes the Service Provider from meeting its obligations under the Contract.
- at all reasonable times employ upon the Contract a competent directly employed Supervisor and any instructions given to them by the Client shall be deemed to have been issued to The Service Provider.
- shall ensure that the Works are physically inspected and checked by a suitably qualified and experienced supervisor. The Service Provider shall maintain a record of all such quality control checks and produce evidence on demand that this provision has been complied with. Failure to do so may lead to the Client carrying out the relevant checks, the cost of which will be recoverable from the Service Provider.

13. ASSIGNMENT AND SUBLETTING

13.1 The Client shall:

- have the right to novate, assign or transfer this Contract, or any part, share or interest in the Contract to any successor in title of the Client or anybody to which all or parts of the functions of the Client may be lawfully transferred. In such event, the Client shall notify The Service Provider accordingly in writing.

13.2 The Service Provider shall:

- not, under any circumstances without the written consent of the Client, assign or transfer this Contract, or any part, share or interest in this Contract.
- shall not without the written consent of the Client (which consent shall not be unreasonably withheld to the prejudice of the Service Provider) sublet any portion of the Contract. The Service Provider will, unless the Client permits otherwise due to unforeseen circumstances which would prevent the Service Provider from fulfilling his contractual obligations, only be allowed to sublet such portions of the Works that they does not undertake in the course of their normal business operations and subject to the same equality and diversity requirements.

It shall be a condition precedent in any authorised subcontracting which may occur that the employment of any sub-contractor under their subcontract with the Service

Provider shall determine immediately and automatically upon the determination (for any reason) of the Service Provider's employment under this Contract.

13.3 The Client must:

- approve any persons to whom work is assigned or sublet in accordance with these provisions, by the Service Provider.
- note that the use by the Service Provider in the undertaking of the Works of any sub-contractor for which approval has not been given by the Client and/or further subletting by any sub-contractor, approved or otherwise shall entitle the Client to terminate the Service Provider's employment under the Contract.

For avoidance of any doubt, the actions of any sub-contractor due to the failure on the part of the Service Provider to observe or fulfil any of their obligations to the sub-contractor under the Housing Grants, Construction and Regeneration Act 1996 will not relieve the Service Provider from any responsibilities or obligations to the Client or other liabilities under this Contract.

14. PAYMENT AND INVOICES

14.1 VAT

All Rates and prices are exclusive of VAT and in relation to any payment to the Service Provider under this Contract, the Client shall in addition pay the amount of any VAT properly chargeable.

15. STATUTORY OBLIGATIONS

15.1 The Service Provider shall:

- comply with, and give all notices required by, any statute, any statutory instrument, rule or order or any regulation or bye-law applicable to the Contract (called the 'statutory requirements') and shall pay all fees and charges in respect of the Contract legally recoverable from him.
- on finding any divergence between the statutory requirements and the Contract Documents or between the statutory requirements and any instruction of the CA, the Service Provider shall immediately give to the CA a written notice specifying the divergence. Subject to this latter obligation, the Service Provider shall not be liable to the Client under this Contract if the Works do not comply with the statutory requirements where and to the extent that such non-compliance of the Works results from the Service Provider having carried out work in accordance with the Contract Documents or any instruction of the CA.

16. INSURANCES

16.1 Injury to or death of persons

The Service Provider shall:

- be liable for and shall indemnify the Client against any expense, liability, loss, claim or proceedings whatsoever arising under statute or at common law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Works, unless due to any act or neglect of the Client or of any person for whom the Client is responsible.

- without prejudice to his liability to indemnify the Client, the Service Provider shall maintain and shall cause any sub-contractor to maintain such insurance's as are necessary to cover the liability of the Service Provider or, as the case may be, of such sub-contractor in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Works.
- be required to maintain the minimum cover as stated in the Contract Details per incident and not limited in the number of claims, indicated in the Contract Details. Provided that nothing contained in this requirement shall impose any liability on the sub-contractor in respect of negligence or breach of duty on the part of the Client, the Service Provider, their other sub-contractors or their respective servants or agents.

16.2 **Damage to property**

The Service Provider shall:

- be liable for and shall indemnify the Client against and insure and cause any sub-contractor to insure against any expense, liability, loss, claim or proceedings in respect to any damage whatsoever to any property real or personal insofar as such damage arises out of the Works and is due to any negligence, omission or default of the Service Provider or any person for whom the Service Provider is responsible or of any sub-contractor or persons for whom the sub-contractor is responsible.
- be required to maintain the minimum cover as stated in the Contract Details per incident and not limited in the number of claims, indicated in the Contract Details.

16.3 **Insurance of Works - Fire, etc., existing structure**

Work:

- The Works (and the existing structures, together with the contents owned by him and for which he is responsible) and all unfixed materials and goods intended for and that have been delivered to and placed on or adjacent to the Works (except temporary buildings, plant, tools and equipment owned or hired by the Service Provider or any sub-contractor) shall be at the sole risk of the Client as regards loss or damage by fire, lightning explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped, riot and civil commotion except that which may be suffered due to any negligence, omission or default of the Service Provider.

The Service Provider shall:

- allow for and take all reasonable precautions to prevent loss or damage by any of the contingencies and shall minimise the extent of any such loss or damage as may be occasioned.
- be entirely responsible for maintaining insurance's at their own expense in respect of their own temporary buildings, plant, tools and equipment owned or hired by him in respect of loss caused by any of the aforementioned or other risks.
- be required to indemnify the Client against and insure and cause any sub-contractor to insure against the risk of any loss or damage, during the execution of the Works, to the goods, chattels, possessions and personal property belonging to or under the control of, or in possession of the Client (called the property of the occupier) where such property of the occupier remains in any building during the execution of the Works, if such loss or damage is a result of the negligence of the Service Provider, their servants or agents of any sub-contractors or where the dwelling is subject to vandalism, theft and other loss or damage whilst in the

Service Provider's possession for the purpose of the undertaking of Void Property Works or other such Works, possession being deemed to be from the receipt of keys etc., by the Service Provider from the Client until the return of the keys etc., to the Client upon completion of the Works.

- have been required to insure himself or to procure that any sub-contractor has insured against injury to or death of persons or damage to property, the Service Provider shall produce and shall cause any sub-contractor to produce as the case may be the relevant policy or policies and premium receipts as and when required by the Client.
- not default in keeping any of the aforementioned insurance's in force during the whole of the Contract, the Client may insure against any risk with respect to which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of the premiums from any monies due or to become due to the Service Provider or such amount shall be recoverable from the Service Provider by the Client as a debt.

16.4 **Insurance against damage to adjacent property;**

The Service Provider shall:

- maintain in the joint names of the Client and themselves, insurance's in respect of any expense, liability, loss, claim or proceedings which the Client may incur or sustain by reason of damage to any property other than the Works caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works excepting damage
 - .1 Caused by the negligence, omission or default of the Service Provider, their servants or agents or of any sub-contractors, their servants or agents.
 - .2 Attributable to errors or omissions in the designing of the Works.
 - .3 Which can reasonably be foreseen to be inevitable having regard to the nature of the Work to be executed or the manner of its execution.
 - .4 Arising from a nuclear risk, war risk or sonic boom.

17.0 **LIQUIDATED AND ASCERTAINED DAMAGES AND SUMS RECOVERABLE FROM THE CONTRACTOR**

- 17.1 if the Service Provider fails to carry out the work as necessary to ensure compliance with the contract Documents, or fails during a visit to undertake or complete any element of work as required by the Contract Documents, or fails to properly respond or, carry out any Work in response to any Works Order issued by the Client, or to remove or make good any defective or unsatisfactory work, materials and/or workmanship not in accordance with the Contract when ordered to do so by the Client, then the Client may employ and pay any other person to carry out the works and all costs incurred may be deducted as a debt.
- 17.2 The Client, in addition, shall also be entitled to deduct liquidated and ascertained damages from any monies due or which may become due to the Service Provider under the contract made up of the rates indicated in the contract details.
- 17.3 If within the Response Repair Period required for any Works Order, the Contractor does not comply, Client may employ and pay any other persons to carry out the Works and all costs incurred may be recovered from the Contractor.

Furthermore should the Service Provider fail to complete the Works as directed in any Works Order within the Response Repair Period so stated or fails to meet a pre-arranged appointment then SBHA shall also be entitled to deduct Liquidated and Ascertained Damages

made up of the following rates indicated in Condition 18.4, below together with the costs set out in Condition 18.5 below, where appropriate per Works Order in respect of such late completion/failure to meet a pre-arranged appointment.

17.4 The Works, undertaken by the Contractor

£2 per Works Order/per day, up to a maximum of **£50**, plus a **£10** administration fee.

17.5 If the Contractor fails to attend a prearranged appointment, SBHA will require the Specialist Contractor to reimburse SBHA its administrative costs and the amount SBHA will be required to pay to the tenant(s) under the terms of SBHA's Tenants' Charter.

£30 for failure to meet each prearranged appointment, such sum including administrative costs.

18. DETERMINATION, TERMINATION AND BREAK PROVISIONS

18.1 Determination for corrupt practices

The Client shall be by notice to the Service Provider to terminate the Service Provider's employment, under this or any other contract with the Client if, in relation to this or any other such contract, the Service Provider 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 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.

18.2 Determination for breach of covenant and financial circumstances

The Client may without prejudice to any accrued rights or remedies under the Contract terminate the Service Provider's employment under the Contract by notice in writing having immediate effect.

If the Service Provider:

- without reasonable cause fails to proceed diligently with the Works or wholly suspends the carrying out of the Works save a suspension of the Works (providing the required notice has been given by the Service Provider) under the terms of the Housing Grants, Construction and Regeneration Act 1996 before completion.
- fails to complete the Works (or any parts thereof) within any agreed programme period (or such other time as may be agreed).
- fails to observe and perform the Contract and the covenants, stipulations and conditions contained in the Agreement or the Contract Documents or any of them including but not limited to the Service Provider's default under Annual Performance Review criteria.
- fails to comply with the Performance Targets or the Model Code of Conduct and Contract Service Standards.
- fails to achieve the standards of workmanship required by the Contract.
- makes application for payment for Work not carried out or not carried out in accordance with the Contract.
- becomes bankrupt or makes a composition or arrangement with their creditors or has a proposal in respect of their company for the voluntary arrangements for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986.

- has an application made under the Insolvency Act 1986 in respect of their company to the Court for the appointment of an administrative receiver.
- has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed.
- has a provisional liquidator receiver or manager of their business or undertaking duly appointed.
- has an administrative receiver as defined in the Insolvency Act 1986 appointed.
- has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge.
- is in circumstances which entitle the court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitle the court to make a winding-up order.

18.3 **The Client's rights on determination**

If The Service Provider's employment is terminated then **the Client** shall:

- cease to be under any obligation to make further payment until after completion of the Works and until the costs loss and/or damage resulting from or arising out of the determination of the Service Provider's employment shall have been calculated and provided such calculation shows a sum or sums due to the Service Provider.
- be entitled to repossess any of its materials clothing equipment vehicles or other goods loaned or hired to the Service Provider if applicable and to exercise a lien over any of the materials clothing plant, equipment vehicles or other goods belonging to the Service Provider for any sum due or otherwise from the Service Provider to the Client.
- be entitled to employ and pay other persons to provide and complete the undertaking of the Works and to use all such Service Provider's materials clothing plant equipment vehicles or other goods for the purposes .
- be entitled to deduct from any sum or sums which would have been due from the Client to the Service Provider under this Contract or any other contract or be entitled to recover the same from the Service Provider as a debt any loss or damage to the Client resulting from or arising out of the determination of the Service Provider's employment. Such loss or damage shall include the reasonable cost to the Client of the time spent by its officers in determining the Service Provider's employment and in making alternative arrangements for the undertaking of the Works.
- when the total costs loss and/or damage resulting from or arising out of the termination of The Service Provider's employment has been calculated and deducted so far as practicable from any sum or sums which have been due to the Service Provider any balance shown as due to the Client shall be recoverable as a debt or alternatively the Client shall pay to the Service Provider any balance shown as due to the Service Provider after the exercise of this right of set off.

The Service Provider shall:

- Within 7 days from the date of any such Determination, provide the Client with authorised copies of their records relating to the Contract.

The rights of the Client upon determination of the Service Provider's employment are in addition to and without prejudice to any other rights the Client may have whether against the Service Provider directly or pursuant to any guarantee or indemnity.

18.4 **Break Provision**

The Client may:

- determine the employment of the Service Provider, by the giving of the period of notice as stated in the Contract Details, to the Service Provider, following the agreement of an mutually agreed exit strategy,

The Service Provider may:

- determine their employment, by the giving of the period of notice to the Client as stated in the Contract Details, following the agreement of an mutually agreed exit strategy. The Service Provider's notice of intention to determine under this clause cannot be given earlier than the end of the second year* from the date of commencement of the Contract Period.

The Service Provider shall:

- not, on receipt by the Service Provider or the Client of the notice referred to above, unless otherwise agreed between himself and the CA, be under any obligation to carry out any Works instructed after receipt of the notice which cannot be reasonably completed before the expiration of the notice.
- not be relieved of their obligations to carry out and complete Works as may have been properly instructed prior to the receipt of the notice, even if such Works cannot be completed before the expiry of such notice and in these circumstances the Service Provider's employment shall be deemed to have been determined upon the completion of the Works to the reasonable satisfaction of the CA
- until such time as their employment is determined, be under an obligation to continue to carry out and complete all the Works instructed and to comply with and be bound by in all respects with the provisions contained within the Contract which shall remain in full force and effect.

If the Service Provider's employment is determined by the exercising of the break provision neither the Client nor the Service Provider shall have any claims against the other in respect of any resulting loss or damage.

18.5 **Determination - By the Service Provider**

The Service Provider may;

- by notice sent by registered post or recorded delivery to the Client determine the employment of the Service Provider under this Contract if the Client is in default in respect of any one or more of the following:-
 - suspends the carrying out of the Works for a continuous period of at least three months, unless such suspension arises from a breach of suspected beach by the Service Provider and notified by the Client to the Service Provider.

becomes bankrupt or makes a composition or arrangement with their creditors, or has a winding up order passed or a receiver or manager of their business is appointed or possession is taken by or on behalf of any creditor of any property the subject of a charge.

does not pay by the final date for payment any amount properly due to the Service Provider under the terms of the Contract which have been authorised for payment by the CA in respect of any certificate and/or VAT due on that amount

Provided that the employment of the Service Provider shall not be determined unless the Client has continued the default for seven days after receipt by registered post or recorded delivery of a notice from The Service Provider specifying such default.

In the event of the Service Provider determining the employment of the Service Provider, the Client shall pay to the Service Provider, after taking into account amounts previously paid, such sum as shall be fair and reasonable for the value of Work begun and executed, materials on site and the removal of all temporary buildings, plant, tools and equipment. The right of determination shall be without prejudice to any other rights or remedies, which the Service Provider may possess.

19. RESOLUTION OF DISPUTES, ADJUDICATION AND ARBITRATION

19.1 Mediation

The Client and the Service Provider may by agreement seek to resolve any dispute or difference arising under this Contract through mediation.

19.2 Conciliation

The Conciliator shall be a person to be agreed between the parties or failing agreement within 10 working days after either party has given to the other a written request to concur to the appointment of a Conciliator, being a person to be appointed at the request of either party by the President of the Royal Institution of Chartered Surveyors.

If, at any time before reference of a difference or dispute to adjudication or arbitration in accordance with the Contract, the Client or Service Provider agree to conciliation in respect of that difference or dispute, they shall apply jointly to the Conciliator who shall conduct the conciliation in accordance with the edition of the Association of Consultant Architects Ltd's Conciliation Procedure current at the date of the application.

Any written agreement signed by the parties to the difference or dispute, which records the terms of any settlement reached during the conciliation, shall be final and binding upon them and they shall give effect to such settlement in accordance with its terms. If either party fails to do so, then the other party shall be entitled to instigate such proceedings as it sees fit to secure enforcement of the settlement.

Either party may, save where the parties have already expressly agreed in writing to accept the decision of the Conciliator as final and binding, subsequently give notice to the other to refer the same dispute or difference to adjudication or arbitration.

19.3 Adjudication

If a dispute or difference arises under this Contract which either the Client or the Service Provider wishes to refer to adjudication, Part 1 of the Schedule to the Scheme for Construction Contract (England and Wales) Regulations 1998 shall apply, subject to the following:

- For the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Details.
- The Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience relevant to this Contract.
- If the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on any matter remitted to the expert by the Adjudicator.

19.4 **Arbitration**

Subject to the provisions of the Mediation, Conciliation and Adjudication procedures, if any dispute or difference concerning this Contract, arises between the Client and the Service Provider of any kind whether before, during the progress or after the completion or abandonment of the Works or after termination of the Service Provider's employment, shall be referred to arbitration in accordance with the latest edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this provision are:

- Any dispute or differences arising under or in respect of the Construction Industry Scheme or VAT, to an extent that legislation provides another method of resolving such disputes or differences;
- Any disputes or differences in connection with the enforcement of any decision of an Adjudicator

Any arbitration shall be conducted in accordance with the latest edition of the Construction Industry Model Arbitration Rules (CIMAR) current at the time the referral is made to the Arbitrator, and the provisions of the Arbitration Act 1996 shall apply.

19.5 **Notice of Arbitration**

If either party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a written notice of arbitration in accordance with the CIMAR rules, identifying the dispute and requiring the other Party to agree to the appointment of an Arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days after the notice of arbitration is served, appointed on the application of either Party by the nominating body named in the Contract Details.

After an Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute to be decided in the arbitral proceedings.

19.6 **Powers of Arbitrator**

The Arbitrator so appointed shall have the power to open up and review any decision, opinion, instruction, direction, certificate or evaluation of the CA and may in their absolute discretion at any time before their final award on the application of either party confirm, vary or set aside the decision of the Adjudicator on any matter if it appears just and reasonable to him so to do, save where the parties have already expressly agreed in writing to accept the decision of the Adjudicator as final and binding.

The award of the Arbitrator shall be final and binding on the Parties.

20. ADMINISTRATION OF THE WORKS

20.1 **Service Provider's Personnel**

The Service Provider:

- shall prior to award of the Contract supply the Client with details of proposed staffing levels and structures. In addition, provide a list of the names of all personnel, with unique reference numbers, to be employed in the execution of the Contract.
- must inform the Client immediately of any changes of personnel. This list must be rigorously maintained.
- shall provide sufficient operatives to comply with the requirements of the Contract.
- is required to demonstrate that operatives are appropriately qualified and fully conversant with the Codes of Practice, Regulations and any other applicable standards and have experience of this type of work.

20.2 Meetings

Meetings will be held as and when required by the Client.

The Client:

- will arrange and chair any meeting they shall deem necessary for the successful running of the Contract.
- will be responsible for the production and circulation of Minutes of Site Meetings.

The Service Provider:

- shall attend all such meetings and they is to inform any nominated or other sub-contractor's when their presence is required. All costs arising are deemed to be included in the Service Provider's tender.

Monthly Review Meetings:

A monthly review meeting will be held with the Service Provider at the end of the first week of each month to review the Service Provider's performance over the previous month.

Quarterly Review Meetings:

A quarterly review meeting will be held with the Service Provider to review the overall performance of the Contracts and to discuss items of continuous improvement of the service and its delivery to benefit the Service Provider, the Client and its residents. Tables of performance statistics will be produced in advance of the meeting to assist the Client and the Service Provider in formulating potential ideas, policies and improvements.

The targets reviewed will include, but not be limited to the following:

- Achievement of priority times
- Job outstanding beyond priority times
- Number of recalls
- Complaints received from staff

Annual Performance Review:

The Client and the Service Provider shall jointly undertake the annual performance review on or about the anniversary of the Commencement Date of the Contract on an annual basis. Like each monthly and quarterly review, the annual performance review will focus on

the performance and effectiveness of the Service Provider.

Should the review indicate that the Client has valid grounds for a determination of the Contract notwithstanding any representations made by the Service Provider, the Contract can and should be determined, then the Client shall issue the notice of determination no later than 2 months (or any extended date that may be agreed between the parties) following the date of the review.

Until such time as the Service Provider's employment is determined, the Contract shall remain in full force and effect and the Service Provider shall be under an obligation to continue to carry out and complete all Works instructed and to comply and be bound by in all respects with the provisions contained within the Contract.

The Service Provider is advised that there are likely to be occasions when residents or residents' representatives will be present and will contribute to the meeting, and that any such meetings may be held at times outside of the normal working hours as set out in the Contract Details.

Partnering:

This Contract will be run on a partnering basis, which will embody some or all of the improvements enshrined in the report of Sir Egan entitled 'Rethinking Construction'. It is envisaged that the partnering ethos will be an integral part of the Contract. The Service Provider will be expected to embrace the opportunity to pro-actively participate in the aforementioned discussions and negotiations without additional charge to the Contract.

20.3 REMOVING RUBBISH AND CLEANING

Allow for clearing away all surplus material rubbish and debris from time to time as necessary or directed by CR and leaving the whole of the Works clean and tidy on completion. Every precaution shall be taken to minimise the risk of fire. Flammable rubbish shall be constantly cleared and fire extinguishers provided and maintained in good condition. No bonfires will be permitted on site.

21. CODE OF CONDUCT

- 21.1 The Contractor shall comply with the Employer's "Model Code of Conduct", a copy of which is attached.
- 21.2 The Contractor should note that all employees will be required to be CRB checked and that he will be required to provide electronic photographs of all personnel employed on the works, so that an approved identification badge can be issued by Domus. Residents are advised not to allow operatives entry into their homes without appropriate identification.

22 SAFETY HEALTH AND WELFARE

- 22.1** In carrying out the Works or Services under this Contract the Contractor shall adopt safe methods of work in order to protect the Health of its employees, the employees of the Association, residents and all other persons including members of the public.

The Contractor shall review its Health and Safety Policy and Safe Working Procedures as often as necessary and in the light of changing legislation. In particular the Contractor shall comply with the requirements of the Health and Safety at Work Act 1974, the Factories Act 1961, the Offices, Shops and Railways Premises Act 1963 and any subordinate legislation.

Without prejudice to the generality of the foregoing, the Contractor will ensure compliance with:

- * Health and Safety at Work etc Act 1974
- * Control of Substances Hazardous to Health Regulations 2002 (COSHH)

- * Management of Health and Safety at Work Regulations 1999
- * Workplace (Health, Safety and Welfare) Regulations 1992
- * Personal Protective Equipment (PPE) at Work Regulations 1992
- * Manual Handling Operations Regulations 1992
- * Health and Safety (First Aid) Regulations 1981
- * Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)
- * The Safety Representative and Safety Committee Regulations 1997
- * Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
- * Control of Asbestos at Work Regulations 2002 and all measures recommended by the Asbestos Research Council for protection from health hazards for persons working with materials containing asbestos
- * Gas Safety (Installation and Use) Regulations 1994
- * Noise at Work Regulations 1989
- * The Electricity at Work Regulations 1989
- * Recommendations as from time-to-time issued by the National Joint Council for the Building Industry in the Working Rule Agreement

The Contractor shall be fully conversant with the Construction (Design and Management) Regulations 2007 and its implications on the Works and comply with all Statutory Regulations in relation thereto.

22.2 C.O.S.H.H. Regulations

The Client:

- endorses the concern over the damage that is caused to the Environment through pollution and requires the successful Service Provider to take all reasonable measures to control the damage to the Environment resulting from C.F.C.'s disposal of waste and other such issues and should comply in all respects to the current regulations regarding the Control of Substances that are Hazardous to Health (C.O.S.H.H.). The disposal of such items is deemed to be included within the Service Provider's tender.

22.4 Environmental and Sustainability Policy

The Client:

- implements a comprehensive Environmental Policy in recognition of its responsibility to contribute to improving the quality of the environment through delivery of services/materials and a copy of this Policy is available to Service Providers free of charge, upon request.

The Service Provider:

- will in its performance of the Contract use all reasonable endeavours to ensure it uses working methods, equipment, materials and consumables which minimise environmental damage.
- in particular, they shall ensure that they are familiar with the Client's Environmental Policy and will fully comply with the stated environmental obligations and will support and assist the Client in achieving the objectives set out in it.
- must provide the Client with a copy of their Environmental Policy or statement of intent towards environmental issues. These shall be compatible with the Client's environmental objectives and the Service Provider must be able to demonstrate, if required, that they operate in harmony and compliance with the Client's Policy.

22.1 PURPOSE

- To provide a code of conduct for Service Providers where the erection of scaffolding is necessary to facilitate repairs to the Property.

23.1 HEALTH & SAFETY

- Scaffolding must be constructed in accordance with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 etc., Working at Height Regulations 2005, and subsequent amendments or re-enactments.
- Suitable and safe means of access and egress must be provided to and from the workplaces and workplaces must be kept safe.

23.2 CONTRACT

- It is the Service Provider's duty to ensure that the requirements of the Contract are adhered to, that health and safety requirements are upheld.