

**FRAMEWORK AGREEMENT**

**among**

- (1) ARKLET HOUSING ASSOCIATION LIMITED**
- (2) BARRHEAD HOUSING ASSOCIATION LIMITED**
- (3) BRIDGEWATER HOUSING ASSOCIATION LIMITED**
- (4) CLOCH HOUSING ASSOCIATION LIMITED**
- (5) LINSTONE HOUSING ASSOCIATION LIMITED**
- (6) OAKTREE HOUSING ASSOCIATION LIMITED**
- (7) PAISLEY SOUTH HOUSING ASSOCIATION LIMITED**
- (8) WILLIAMSBURGH HOUSING ASSOCIATION LIMITED**

**and**

- (9) [INSERT NAME OF CONTRACTOR]**

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**re: I-FLAIR BUILDING MAINTENANCE  
FRAMEWORK AGREEMENT**

**LOT (S) [INSERT LOT NUMBER(S) THAT THE CONTRACTOR  
IS BEING APPOINTED FOR]**

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[www.mms.co.uk](http://www.mms.co.uk)

## AGREEMENT

among:-

- (1) **ARKLET HOUSING ASSOCIATION LIMITED** (Company number SP1572RS) whose principal place of business is at Barrland Court, Barrland Drive, Giffnock, Glasgow, G46 7QD and a charity registered in Scotland, number SC009847;
- (2) **BARRHEAD HOUSING ASSOCIATION LIMITED** (Company number IP02229R) whose principal place of business is at 60-70 Main Street, Barrhead, Glasgow, G78 1SB and a charity registered in Scotland, number SC036265;
- (3) **BRIDGEWATER HOUSING ASSOCIATION LIMITED** registered under the Industrial and Provident Act 1965 (Number 2525RS) whose principal place of business is at 1<sup>st</sup> Floor, Bridgewater Shopping Centre, Erskine, PA8 7AA and a charity registered in Scotland, number SC035819;
- (4) **CLOCH HOUSING ASSOCIATION LIMITED** (Company number SP1893RS) whose principal place of business is at 19 Bogle Street, Greenock, PA15 1ER and a charity registered in Scotland, number SC013996;
- (5) **LINSTONE HOUSING ASSOCIATION LIMITED** (Company number SP2524RS) whose principal place of business is at 32 Burnbrae Avenue, Linwood, PA3 3DD and a charity registered in Scotland, number SCO27454;
- (6) **OAKTREE HOUSING ASSOCIATION LIMITED** (Company number SP0223RS) whose principal place of business is at 41 High Street, Greenock, PA15 1NR;
- (7) **PAISLEY SOUTH HOUSING ASSOCIATION LIMITED** (Company number SP2171RS) whose principal place of business is at 64 Espedair Street, Paisley, PA2 6RW a charity registered in Scotland, number SC035589;
- (8) **WILLIAMSBURGH HOUSING ASSOCIATION LIMITED** (Company number SP1991RS) whose principal place of business is at Ralston House, Cyril Street, Paisley, PA1 1RW and a charity registered in Scotland, number SC035350;

(Collectively referred to in this Framework Agreement as (“**I-FLAIR**”) and each individually referred to in this Framework Agreement as an “**I-Flair Member**”)

and

- (9) **[INSERT NAME OF CONTRACTOR]** (Company Number: **[INSERT COMPANY NUMBER]**) whose registered address is at **[INSERT REGISTERED ADDRESS]** (the “**Contractor**”).

## BACKGROUND

- (A) I-FLAIR placed a contract notice 2011/5 70-113558 on 6<sup>th</sup> April 2011 in the Official Journal of the European Union seeking expressions of interest from potential contractors for the provision of services (divided into lots) to Contracting Bodies under a framework agreement.
- (B) The Contractor submitted its expression of interest on **[INSERT DATE]** in response to the contract notice.
- (C) I-FLAIR invited potential contractors (including the Contractor) on 25<sup>th</sup> August 2011 to tender for the provision of construction works and services.
- (D) The Contractor submitted a tender on **[INSERT DATE]**.

- (E) On the basis of the Contractor's tender, I-FLAIR selected the Contractor to enter a framework agreement to provide services to Contracting Bodies on a call-off basis in respect of the Contractor's Lots in accordance with this Framework Agreement.
- (F) This Framework Agreement sets out the award and ordering procedure for construction works and services which may be required by Contracting Bodies, the main terms and conditions for any Call-Off Contract which Contracting Bodies may conclude, and the obligations of the Contractor during and after the term of this Framework Agreement.
- (G) It is the Parties' intention that there will be no obligation for any Contracting Body to award any orders under this Framework Agreement during its Term.

**IT IS AGREED** as follows:-

1. **INTERPRETATION**

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

<b>“Approval”</b>	means the prior written approval of I-FLAIR or as the context may require an I-Flair Member
<b>“Audit”</b>	means an audit carried out pursuant to Clause 17
<b>“Auditor”</b>	means any party carrying out an audit of one or more of the Contracting Bodies
<b>“Award Criteria”</b>	means the Standard Services Award Criteria and/or the Competed Services Award Criteria as the context requires
<b>“Call-Off Contract”</b>	means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Contracting Body and the Contractor comprising an Order Form and the Call-Off Terms and Conditions (as may be amended pursuant to Clause 7.3.6)
<b>“Call-Off Terms and Conditions”</b>	means the terms and conditions described in Schedule Part 5
<b>“Commencement Date”</b>	means 11 <sup>th</sup> January 2012
<b>“Commercially Sensitive Information”</b>	means any information:- (a) which is provided in writing by the Contractor to I-FLAIR or an I-Flair Member in confidence and designated as Commercially Sensitive Information; and/or (b) that constitutes a trade secret
<b>“Competed Services”</b>	means the competed services referred to in Part B of Schedule Part 1
<b>“Competed Services Award Criteria”</b>	means the award criteria to be applied to tenders received through mini-competitions held for the award of Call-Off Contracts for Competed Services as set out in Schedule Part 2

<b>“Confidential Information”</b>	<p>means:-</p> <p>(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA; and</p> <p>(b) the Commercially Sensitive Information</p>
<b>“Contracting Authority”</b>	means any contracting authority as defined in Regulation 3 of the Public Contracts (Scotland) Regulations 2006 other than one of the I-Flair Members
<b>“Contracting Bodies”</b>	means each of the I-Flair Members and any other contracting bodies described in the OJEU Notice
<b>“Contractor’s Lots”</b>	means the lots which the Contractor has been appointed to under this Framework Agreement as set out in Part D of Schedule Part 1
<b>“DPA”</b>	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
<b>“Environmental Information Regulations”</b>	mean the Environmental Information Regulations (Scotland) 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or the Scottish Government in relation to such regulations
<b>“Framework Administrator”</b>	means <b>[INSERT NAME OF THE FRAMEWORK ADMINISTRATOR WHO IS RESPONSIBLE FOR ACTING ON BEHALF OF I-FLAIR AS DESCRIBED IN CLAUSE 1.3]</b>
<b>“Framework Agreement”</b>	means this agreement and the Schedule to this agreement
<b>“Framework Agreement Variation Procedure”</b>	means the procedure set out in Schedule Part 6
<b>“Fraud”</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Framework Agreement or defrauding or attempting to defraud or conspiring to defraud any Contracting Body
<b>“Good Industry Practice”</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances

<b>“Guidance”</b>	means any guidance issued or updated by the European Commission, UK Government or the Scottish Government from time to time in relation to or relevant to the Regulations
<b>“Intellectual Property Rights”</b>	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
<b>“ITT”</b>	means the invitation to tender issued by I-FLAIR on 25 <sup>th</sup> August 2011 (together with all supplemental information issued during the tender process) which includes:  Document A – Tender Support Document  Document B – Pricing Matrices (Lot 1 – Roofing and render; Lot 2 – Windows and doors; Lot 3 – Kitchens and bathrooms; Lot 4 – Heating; Lot 5 – Decoration; Lot 6 – Gas Servicing; Lot 7 – Open Spaces Maintenance and Lot 8 – Electrical work)  Document C – Schedule of Activity (C1 Lot 1 – Roofing and External Works; C2 Lot 2 – Windows and Doors; C3 Lot 3 – Kitchens and Bathrooms; C4 Lot 4 – Heating; C5 Lot 5 – External Decoration; C6 Lot 6 – Gas Maintenance; C7 Lot 7 – Open Spaces Maintenance and C8 Lot 8 – Electrical Work (including specification))  Document D – Technical Specifications (D1 Lot 1 – Roofing & External Works; D2 Lot 2 – Windows and Doors; D3 Lot 3 – Kitchens and Bathrooms; D4 Lot 4 – Heating; D7 Lot 7 – Open Spaces Maintenance)  Document E – Draft Framework Agreement  Document F – Equality and Diversity Questionnaire  Document G – Written Tender Questions  Document H – Certificates  Document I - Q&A Log
<b>“Law”</b>	means any applicable Act of Parliament or Act of the Scottish Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body
<b>“Management Information”</b>	means the management information referred to in Clause 16.1

<b>“Material Default”</b>	means any breach by the Contractor of Clause 7 (Award Procedures), Clause 8 (Warranties), Clause 11 (Safeguard Against Fraud), Clause 14 (Statutory Requirements), Clause 15 (Non-Discrimination), Clause 16 (Provision of Management Information), Clause 17 (Records and Audit Access), Clause 19 (Data Protection), Clause 20 (Environmental Information), Clause 21 (Publicity) and Clause 28 (Transfer and Sub-contracting)
<b>“Month”</b>	means a calendar month
<b>“OJEU Notice”</b>	means the contract notice 2011/5 70-113558 dated 6 <sup>th</sup> April 2011 published in the Official Journal of the European Union
<b>“Order”</b>	means an order for Services served by any Contracting Body on the Contractor in accordance with the Ordering Procedures
<b>“Order Form”</b>	means a document setting out details of an Order in the form set out in Schedule Part 4
<b>“Ordering Procedures”</b>	means the ordering and award procedures specified in Clause 7
<b>“Other Contracting Bodies”</b>	means all Contracting Bodies except the I-Flair Members
<b>“Parent Company”</b>	means any company which is the ultimate Holding Company of the Contractor and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor. The term <b>“Holding Company”</b> shall have the meaning ascribed by Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
<b>“Party”</b>	means I-FLAIR, an I-Flair Member and/or the Contractor
<b>“PQQ Response”</b>	means the response submitted by the Contractor to the pre-qualification questionnaire issued by I-FLAIR on <b>[INSERT DATE]</b>
<b>“Pricing Matrices”</b>	means the pricing matrices set out in Schedule Part 3
<b>“Regulations”</b>	means the Public Contracts (Scotland) Regulations 2006
<b>“Regulatory Bodies”</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the I-Flair Members
<b>“Requests for Information”</b>	means a request for information or an apparent request under the Environmental Information Regulations
<b>“Services”</b>	means the construction and/or supply works and services detailed in Schedule Part 1

<b>“Services Framework Lots”</b>	means the lots advertised in the OJEU Notice and referred to in Part C of Schedule Part 1
<b>“Services Framework Contractors”</b>	means the contractors appointed by I-FLAIR as framework contractors under a framework agreement
<b>“Staff”</b>	means all persons employed by the Contractor together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement or Call-Off Contracts
<b>“Standard Services”</b>	means the standard services referred to in Part A of Schedule Part 1
<b>“Standard Services Award Criteria”</b>	means the award criteria to be applied for the award of Call-Off Contracts for Standard Services as set out in Schedule Part 2
<b>“Tender”</b>	means the tender submitted by the Contractor to I-FLAIR on <b>INSERT DATE</b>
<b>“Term”</b>	means the period commencing on the Commencement Date and ending on the date 48 months after the Commencement Date or on earlier termination of this Framework Agreement
<b>“Working Days”</b>	means any day other than a Saturday, Sunday or public holiday in Scotland
<b>“Year”</b>	means a calendar year

1.2 The interpretation and construction of this Framework Agreement shall be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7 references in this Framework Agreement to any Clause or Sub-Clause or part of the Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or part of the Schedule to this Framework Agreement so numbered;
- 1.2.8 references in this Framework Agreement to any paragraph or sub-paragraph of a part of the Schedule without further designation shall be construed as a reference to the

paragraph or sub-paragraph of the relevant part of the Schedule to this Framework Agreement so numbered;

1.2.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise; and

1.2.10 in the event and to the extent only of any conflict between the Clauses and any part of the Schedules, the Clauses shall prevail over the Schedule.

### **Exercise of I-FLAIR rights through the Framework Administrator**

1.3 There are a number of rights granted to “I-FLAIR” under this Framework Agreement (including under Clauses 9.3, 10.3, 21.1, 22, 23, 26.6, 28.1 and 29 and under Schedule Part 6) and only I-FLAIR (i.e. the I-Flair Members collectively and not the I-Flair Members individually) may exercise those rights collectively acting through the Framework Administrator.

### **No Liability for I-FLAIR**

1.4 I-FLAIR (i.e. the I-Flair Members as a collective entity) shall have no liability whatsoever under this Framework Agreement and the liability of the I-Flair Members under this Framework Agreement (if any) shall, subject to clause 1.5 below, arise in respect of the I-Flair Members individually.

### **Several liability of the I-Flair Members**

1.5 Unless expressly provided otherwise in this Framework Agreement, the liability of the I-Flair Members for their respective obligations and liabilities in relation to this Framework Agreement (if any) shall be several and shall extend only to any loss or damage arising out of their own breaches. If for some reason more than one of the I-Flair Members became liable for the same obligation or liability, liability for the total sum recoverable shall be attributed to the relevant I-Flair Members in equal shares.

### **Notices to or by I-FLAIR**

1.6 Any notices or other communications which under this Framework Agreement are to be issued to or by I-FLAIR shall be issued to or by I-FLAIR (and not each of the individual I-Flair Members) in accordance with Clause 35.

## **2. STATEMENT OF INTENT**

2.1 In delivering the Services, the Contractor shall operate at all times in accordance with any and all of I-FLAIR’s published objectives and without prejudice to the generality of the foregoing in accordance with the following objectives and statement of intent:-

2.1.1 the objectives and statement of intent set out in the ITT

2.1.2 the Contractor has been appointed and I-FLAIR has entered into this Framework Agreement on the basis of the Contractor’s response to the PQQ and ITT and, in particular, the representations made by the Contractor to I-FLAIR in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.

2.2 Clause 2 is an introduction to this Framework Agreement and does not expand the scope of the Parties’ obligations or alter the plain meaning of the terms and conditions of this Framework Agreement, except and to the extent that those terms and conditions do not address a particular



circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to Clause 2.

### 3. **TERM OF FRAMEWORK AGREEMENT**

The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.

### 4. **SCOPE OF FRAMEWORK AGREEMENT**

4.1 This Framework Agreement governs the relationship between the I-Flair Members and the Contractor in respect of the provision of the Services by the Contractor to the I-Flair Members and to Other Contracting Bodies. The I-Flair Members reserve the right to introduce key performance indicators (KPI's) in consultation with the Contractor during the Term.

4.2 The I-Flair Members and (subject to the following provisions of this Clause 4.2) Other Contracting Bodies may at their absolute discretion and from time to time order Services from the Contractor in accordance with the Ordering Procedures during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with all Laws (including, but not limited to, the Regulations and the Guidance) and the Ordering Procedures. If there is a conflict between Clause 7 and the Regulations and the Guidance, the Other Contracting Body shall comply with the Regulations and the Guidance.

4.3 The Contractor acknowledges that there is no obligation for the I-Flair Members and for any Other Contracting Body to purchase any Services from the Contractor during the Term.

4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by any of the I-Flair Members and/or any Other Contracting Body in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

### 5. **CONTRACTOR'S APPOINTMENT**

I-FLAIR appoints the Contractor as a potential provider of the Services referred to in the Contractor's Lots and the Contractor shall be eligible to be considered for the award of Orders for such Services by the I-Flair Members and Other Contracting Bodies during the Term.

### 6. **NON-EXCLUSIVITY**

The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the I-Flair Members and/or Other Contracting Bodies for Services from the Contractor and that the I-Flair Members and/or Other Contracting Bodies are at all times entitled to enter into other contracts and arrangements with other contractors for the provision of any or all services which are the same as or similar to the Services.

### 7. **AWARD PROCEDURES**

#### **Awards under the Framework Agreement**

7.1 If an I-Flair Member or any Other Contracting Body decides to source Services through the Framework Agreement then it may:-

- 7.1.1 award Standard Services in accordance with the terms laid down in this Framework Agreement without reopening competition; or
- 7.1.2 award Competed Services (where all the terms are not laid out in this Framework Agreement) following a mini-competition conducted in accordance with the requirements of the Regulations and the Guidance.

#### **Standard Services (Awards without re-opening Competition)**

- 7.2 Any Contracting Body ordering Standard Services under the Framework Agreement without reopening competition shall:-
  - 7.2.1 identify the relevant Services Framework Lot which the Standard Services requirements fall into;
  - 7.2.2 identify which of the Standard Services within that Services Framework Lot that it requires and the quantity of those Standard Services;
  - 7.2.3 in relation to each Services Framework Contractor appointed under the relevant Services Framework Lot apply the Standard Services Award Criteria to the information set out under the relevant framework agreement at Part A of Schedule Part 1 (Services and Lots) and in Schedule 3 (Pricing Matrices) in so far as that information relates to the Standard Services that the Contracting Body requires;
  - 7.2.4 award its Standard Services requirement to the Services Framework Contractor who obtains the highest score using the Standard Services Award Criteria;
  - 7.2.5 place an Order with the successful Services Framework Contractor which:-
    - (a) states the Standard Services requirements;
    - (b) identifies the Services Framework Lot in which the award is made;
    - (c) states the price payable for the Standard Services requirements in accordance with the Price Matrix applicable for the relevant Services Framework Lot; and
    - (d) incorporates the Call-Off Terms and Conditions.

#### **Competed Services (Awards following Mini-Competitions)**

- 7.3 Any Contracting Body ordering Competed Services under the Framework Agreement shall:-
  - 7.3.1 identify the relevant Services Framework Lot which its Competed Services requirements fall into;
  - 7.3.2 identify the Services Framework Contractors capable of performing the Call-Off Contract for the Competed Services requirements;
  - 7.3.3 supplement and refine the Call-Off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
  - 7.3.4 invite tenders by conducting a mini-competition for its Competed Services requirements in accordance with the Regulations and Guidance and in particular:-
    - (a) consult in writing the Services Framework Contractors capable of performing the Call-Off Contract for the Competed Services requirements and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;

- (b) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and
  - (c) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders;
- 7.3.5 apply the Competed Services Award Criteria to the Services Framework Contractors' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its Competed Services requirements; and
- 7.3.6 award its Competed Services requirements by placing an Order with the successful Services Framework Contractor which:-
- (a) states the Competed Services requirements;
  - (b) identifies the Services Framework Lot or Services Framework Lots for which the award is made;
  - (c) states the price payable for the Competed Services requirements in accordance with the tender submitted by the successful Services Framework Contractor; and
  - (d) incorporates the Call-Off Terms and Conditions applicable to that Services Framework Lot as modified by the Competed Services requirements.
- 7.4 The Contractor agrees that all tenders submitted by the Contractor in relation to a mini-competition held pursuant to this Clause 7 shall remain open for acceptance for thirty (30) days (or such other period specified in the invitation to tender issued by the relevant Contracting Body in accordance with the Ordering Procedure).
- 7.5 Notwithstanding the fact that the Contracting Body has followed the procedure set out above in this Clause 7, the Contracting Body shall be entitled at all times to decline to make an award for its Services requirements. Nothing in this Framework Agreement shall oblige any Contracting Body to place any Order for Services.

#### **Responsibility for Awards**

- 7.6 The Contractor acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the I-Flair Members are not responsible or accountable for and shall have no liability whatsoever in relation to:-
- 7.6.1 the conduct of Other Contracting Bodies in relation to the Framework Agreement; or
  - 7.6.2 the performance or non-performance of any Call-Off Contracts between the Contractor and Other Contracting Bodies entered into pursuant to the Framework Agreement.

#### **Form of Order**

- 7.7 Subject to Clauses 7.1 to 7.6 above, each Contracting Body may place an Order with the Contractor by serving an order in writing in substantially the form set out in Schedule Part 4 or such similar or analogous form agreed with the Contractor including systems of ordering involving facsimile, electronic mail or other on-line solutions. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this Clause 7.7 shall not constitute an Order under this Framework Agreement.

### **Accepting and Declining Orders**

7.8 Following receipt of an Order, the Contractor shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the relevant Contracting Body and notified to the Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed five (5) Working Days) acknowledge receipt of the Order and either:-

7.8.1 notify the Contracting Body that it declines to accept the Order; or

7.8.2 notify the relevant Contracting Body that it accepts the Order by signing and returning the Order Form.

7.9 If the Contractor:-

7.9.1 notifies the Contracting Body that it declines to accept an Order; or

7.9.2 the time-limit referred to in Clause 7.8 has expired;

then the offer from the Contracting Body to the Contractor shall lapse and the relevant Contracting Body may offer that Order to the Services Framework Contractor that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria.

7.10 The Contractor in agreeing to accept such an Order issued pursuant to Clause 7.7 above shall enter a Call-Off Contract with the relevant Contracting Body for the provision of Services referred to in that Order. A Call-Off Contract shall be formed in the way described in the signed Order Form provided by the Contractor (or such similar or analogous form agreed with the Contractor) pursuant to Clause 7.7.

## **8. WARRANTIES AND REPRESENTATIONS**

8.1 The Contractor warrants and represents to each of the I-Flair Members that:-

8.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;

8.1.2 this Framework Agreement is executed by a duly authorised representative of the Contractor;

8.1.3 in entering into this Framework Agreement or any Call-Off Contract it has not committed any Fraud;

8.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response (including statements made in relation to the categories referred to in Regulations 23, 24 and 25 of the Regulations) for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to I-FLAIR prior to the execution of this Framework Agreement and it will promptly advise I-FLAIR of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

8.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;

- 8.1.6 it has not caused or induced any person to enter such agreement referred to in Clause 8.1.5 above;
- 8.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the Framework Agreement;
- 8.1.8 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
- 8.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with any of the I-Flair Members or Other Contracting Bodies;
- 8.1.10 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with any of the I-Flair Members or Other Contracting Bodies;
- 8.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and
- 8.1.12 in the three (3) years prior to the date of this Framework Agreement:-
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
  - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Contractor's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.
- 8.2 The Contractor warrants and represents to each of the Other Contracting Bodies the statements in Clause 8.1 above.

## 9. **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 9.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of any of the I-Flair Members or any other public body or person employed by or on behalf of any of the I-Flair Members or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with any of the I-Flair Members or any other public body or person employed by or on behalf of any of the I-Flair Members or any other public body (including its award to the Contractor, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such

contract. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010 (as amended from time to time).

9.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any of the I-Flair Members or any other public body or any person employed by or on behalf of any of the I-Flair Members or any other public body in connection with this Framework Agreement, any Call-Off Contract or any other contract with any of the I-Flair Members or any other public body or person employed by or on behalf of any of the I-Flair Members or any other public body.

9.3 If the Contractor, its Staff or any person acting on the Contractor's behalf, engages in conduct prohibited by Clauses 9.1 or 9.2 above or commits any offence under the Bribery Act 2010 I-FLAIR may: -

9.3.1 terminate this Framework Agreement with immediate effect by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by the I-Flair Members resulting from the termination; or

9.3.2 recover in full from the Contractor and the Contractor shall indemnify each of the I-Flair Members in full from and against any other loss sustained by any of the I-Flair Members in consequence of any breach of this Clause, whether or not the Framework Agreement has been terminated.

## 10. **CONFLICTS OF INTEREST**

10.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of any I-Flair Member and/or Other Contracting Bodies) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to any I-Flair Member and Other Contracting Bodies under the provisions of this Framework Agreement or any Call-Off Contract.

10.2 The Contractor shall promptly notify and provide full particulars to the relevant I-Flair Member or the relevant Other Contracting Body if such conflict referred to in Clause 10.1 above arises or is reasonably foreseeable to arise.

10.3 I-FLAIR reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of I-FLAIR, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to any I-Flair Member and Other Contracting Bodies under the provisions of this Framework Agreement or any Call-Off Contract. The action of I-FLAIR pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to I-FLAIR or to any I-Flair Member.

10.4 This Clause shall apply during the Term and for a period of two (2) years after its termination or expiry.

## 11. **SAFEGUARD AGAINST FRAUD**

The Contractor shall safeguard the I-Flair Members' and any Other Contracting Body's funding of the Framework Agreement and any Call-Off Contract against Fraud generally and, in particular, Fraud on the part of the Contractor or its Staff. The Contractor shall notify the relevant I-Flair Member or the relevant Other Contracting Body immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

**12. CALL-OFF CONTRACT PERFORMANCE**

12.1 The Contractor shall perform all Call-Off Contracts entered into with an I-Flair Member or any Other Contracting Body in accordance with:-

12.1.1 the requirements of this Framework Agreement; and

12.1.2 the terms and conditions of the respective Call-Off Contracts.

12.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

**13. PRICES FOR SERVICES**

13.1 The prices offered by the Contractor for Call Off Contracts to Contracting Bodies for Standard Services shall be the prices listed in the Pricing Matrix for the relevant Contractor's Lot and such prices shall be adjusted annually in accordance with the provisions of Schedule Part 3.

13.2 The prices offered by the Contractor for Call-Off Contracts to Contracting Bodies for Competed Services shall be based on the prices set out in the Pricing Matrices and tendered in accordance with the requirements of the mini-competition held pursuant to Clause 7.

**14. STATUTORY REQUIREMENTS**

The Contractor shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

**15. NON-DISCRIMINATION**

15.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).

15.2 The Contractor shall take all reasonable steps to secure the observance of Clause 15.1 by all servants employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Framework Agreement.

**16. PROVISION OF MANAGEMENT INFORMATION**

16.1 The Framework Administrator shall confirm to the Contractor during the Term the requirements of the I-Flair Members in respect of management information including the form and nature of the management information to be provided and the timescales for providing that information and the Contractor shall comply with such requirements at no additional cost.

16.2 The I-Flair Members may share the Management Information supplied by the Contractor with any Contracting Body.

16.3 An I-Flair Members may make changes to the Management Information which the Contractor is required to supply to that I-Flair Member and shall give the Contractor at least one (1) month's written notice of any changes.

**17. RECORDS AND AUDIT ACCESS**

17.1 The Contractor shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework

Agreement including the Services provided under it, the Call-Off Contracts entered into with Contracting Bodies and the amounts paid by each Contracting Body.

- 17.2 The Contractor shall keep the records and accounts referred to in Clause 17.1 above in accordance with good accountancy practice.
- 17.3 The Contractor shall afford the relevant Contracting Body and/or the Auditor such access to such records and accounts as may be required from time to time.
- 17.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Term and for a period of six (6) years after expiry of the Term to relevant Contracting Body and the Auditor.
- 17.5 The Contracting Bodies shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services pursuant to the Call-Off Contracts, save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Contracting Bodies.
- 17.6 Subject to the Contracting Bodies' rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:-
- 17.6.1 all information requested by the Auditor within the scope of the Audit;
  - 17.6.2 reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and
  - 17.6.3 access to the Staff.
- 17.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 17, unless the Audit reveals a Material Default by the Contractor in which case the Contractor shall reimburse the relevant Contracting Body reasonable costs incurred in relation to the Audit.

## 18. **CONFIDENTIALITY**

- 18.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:
- 18.1.1 treat another Party's Confidential Information as confidential; and
  - 18.1.2 not disclose another Party's Confidential Information to any other person without the owner's prior written consent.
- 18.2 Clause 18.1 shall not apply to the extent that:
- 18.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Environmental Information Regulations pursuant to clause 20.5 (Environmental Information);
  - 18.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 18.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 18.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement; or



- 18.2.5 it is independently developed without access to the other party's Confidential Information.
- 18.3 The Contractor may only disclose Confidential Information of the I-Flair Members to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 18.4 The Contractor shall not, and shall procure that its Staff do not, use Confidential Information received from the I-Flair Members otherwise than for the purposes of this Framework Agreement.
- 18.5 Nothing in this Agreement shall prevent the I-Flair Members from disclosing the Contractor's Confidential Information:
- 18.5.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- 18.5.2 to any consultant, contractor or other person engaged by the I-Flair Members;
- 18.5.3 for the purpose of the examination and certification of the accounts of an I-Flair Member.
- 18.6 The I-Flair Members shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 18.5 is made aware of the obligations of confidentiality applying to the I-Flair Members.
- 18.7 Nothing in this clause 18 shall prevent any Party from using any techniques, ideas or know-how gained during the performance of the Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

## 19. **DATA PROTECTION**

- 19.1 For the purposes of this Clause 19, the terms "Data Controller", "Data Subject", "Data Processor", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.
- 19.2 The Contractor shall (and shall procure that all of its Staff) comply with any notification requirements under the DPA and the Parties will duly observe all of their obligations under the DPA which arise in connection with this Framework Agreement.
- 19.3 The provisions of this Clause shall apply during the Term and indefinitely after its expiry.

## 20. **ENVIRONMENTAL INFORMATION**

- 20.1 The Contractor acknowledges that the I-Flair Members maybe subject to the requirements of the Environmental Information Regulations and shall assist and cooperate with the I-Flair Members to enable the I-Flair Members to comply with their information disclosure obligations.
- 20.2 The Contractor shall and shall procure that its sub-contractors shall:

- 20.2.1 transfer to the relevant I-Flair Members(s) all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- 20.2.2 provide the relevant I-Flair Members(s) with a copy of all Information in its possession, or power in the form that the relevant I-Flair Members(s) requires within five Working Days (or such other period as the relevant I-Flair Members(s) may specify) of the relevant I-Flair Member's request; and
- 20.2.3 provide all necessary assistance as reasonably requested by the relevant I-Flair Member to enable the relevant I-Flair Member to respond to the Request for Information within the time for compliance set out in the Environmental Information Regulations.
- 20.3 The relevant I-Flair Member shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Environmental Information Regulations.
- 20.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by an I-Flair Member.
- 20.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 20.2) the I-Flair Members may be obliged under the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 20.5.1 in certain circumstances without consulting the Contractor; or
- 20.5.2 following consultation with the Contractor and having taken their views into account;
- 20.5.3 provided always that where 20.2 applies the relevant I-Flair Member shall, where required, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

## 21. **PUBLICITY**

- 21.1 Unless otherwise directed by I-FLAIR, the Contractor shall not make any press announcements or publicise this Framework Agreement in any way without I-FLAIR's prior written consent.
- 21.2 The I-Flair Members shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the I-Flair Members, including any examination of this Framework Agreement by an Auditor or otherwise.
- 21.3 The Contractor shall not do anything which may damage the reputation of the I-Flair Members or bring the I-Flair Members into disrepute.

## 22. **TERMINATION**

### **Termination on Default**

- 22.1 I-FLAIR may terminate the Framework Agreement by serving written notice on the Contractor with effect from the date specified in such notice:-
- 22.1.1 where the Contractor commits a Material Default and:-
- (a) the Contractor has not remedied the Material Default to the satisfaction of I-FLAIR within twenty (20) Working Days, or such other period as may be

specified by I-FLAIR, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

- (b) the Material Default is not, in the reasonable opinion of I-FLAIR, capable of remedy; or

22.1.2 where any Contracting Body terminates a Call-Off Contract awarded to the Contractor under this Framework Agreement as a consequence of default by the Contractor.

### **Termination on Financial Standing**

22.2 The Contractor shall on each anniversary of the Commencement Date provide to the I-Flair Members an updated copy of the PQQ Response. I-FLAIR may terminate the Framework Agreement by serving notice on the Contractor in writing with effect from the date specified in such notice where (in the reasonable opinion of I-FLAIR), there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which adversely impacts on the Contractor's ability to supply Services under this Framework Agreement.

### **Termination on Insolvency and Change of Control**

22.3 I-FLAIR may terminate this Framework Agreement with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:-

22.3.1 it is unable to pay its debts within the meaning of Section 123(1) of the Insolvency Act 1986,

22.3.2 a voluntary arrangement is made with its creditors under Part 1 of the Insolvency Act 1986,

22.3.3 a scheme of arrangement is made with its creditors under Part 26 of the Companies Act 2006,

22.3.4 an administration order in respect of the entity has been made or notice of an intention to appoint or a notice of appointment of an administrator of the entity has been given or filed at court,

22.3.5 a receiver or manager is appointed (including an administrative receiver) whether under Part 3 of the Insolvency Act 1986,

22.3.6 it goes into liquidation as defined in Section 247(2) of the Insolvency Act 1986 (other than a voluntary winding up which is first approved by the other party and is for the sole purpose of amalgamation or reconstruction while solvent),

22.3.7 a liquidator or provisional liquidator is appointed under Section 135 of the Insolvency Act 1986,

22.3.8 it is subject to any form of winding up or striking off which is not set aside within 21 days, or

22.3.9 any event similar to those listed in Clause 22.3.1 to Clause 22.3.8 occurs under the law of any jurisdiction.

22.4 The Contractor shall notify I-FLAIR immediately if the Contractor undergoes a change of control within the meaning of Section 450 of the Corporation Taxes Act 2010 ("**Change of Control**"). I-FLAIR may terminate the Framework Agreement by giving notice in writing to the Contractor with immediate effect within six (6) Months of: -

22.4.1 being notified that a Change of Control has occurred; or

22.4.2 where no notification has been made, the date that I-FLAIR becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

### **Termination by I-FLAIR**

22.5 I-FLAIR shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving three Months' written notice to the Contractor.

### **23. SUSPENSION OF CONTRACTOR'S APPOINTMENT**

Without prejudice to I-FLAIR's rights to terminate the Framework Agreement in Clause 22 above, if a right to terminate this Framework Agreement arises in accordance with Clause 22, I-FLAIR may suspend the Contractor's appointment to supply Services to Contracting Bodies in any or all the Contractor's Lots by giving notice in writing to the Contractor. If I-FLAIR provides notice to the Contractor in accordance with this Clause 23, the Contractor's appointment shall be suspended for the period set out in the notice or such other period notified to the Contractor by I-FLAIR in writing from time to time.

### **24. CONSEQUENCES OF TERMINATION AND EXPIRY**

24.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 24.

24.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

24.3 Within thirty (30) Working Days of the date of termination or expiry of the Framework Agreement, the Contractor shall return to the relevant I-Flair Members any data and Confidential Information belonging to the relevant I-Flair Members in the Contractor's possession, power or control, either in its then current format or in a format nominated by the relevant I-Flair Member (in which event the each relevant I-Flair Member will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the relevant I-Flair Members, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.

24.4 Each I-Flair Member shall be entitled to require access to data or information arising from the provision of the Services to that I-Flair Member from the Contractor until the latest of:-

24.4.1 the expiry of a period of twenty four (24) Months following termination or expiry of the Framework Agreement; or

24.4.2 the date when the Contractor's obligations under or arising out of a Call-Off Contract have been completed or discharged.

24.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

24.6 The provisions of Clauses 8, 9, 10, 11, 17, 18, 19, 25, 26 and 37 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## 25. **INDEMNITY**

25.1 The Contractor shall indemnify and keep indemnified the I-Flair Members in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This Clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff or by any circumstances within its or their control.

## 26. **INSURANCE**

26.1 The Contractor shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Contractor under this Framework Agreement including death or personal injury, or loss of or damage to property.

26.2 The Contractor shall effect and maintain the following insurances for the duration of the Framework Agreement in relation to the performance of the Framework Agreement:-

26.2.1 public liability insurance adequate to cover all risks in the performance of this Framework Agreement from time to time;

26.2.2 employers' liability insurance with a minimum limit of indemnity as required by law from time to time; and

26.2.3 professional indemnity insurance as may reasonably require in relation to a Call-Off Contract (and as required by law) from time to time.

26.3 Any excess or deductibles under such insurance (referred to in Clause 26.1 and Clause 26.2) shall be the sole and exclusive responsibility of the Contractor.

26.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Framework Agreement.

26.5 The Contractor shall produce to an I-Flair Member, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

26.6 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Framework Agreement then I-FLAIR may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

26.7 The Contractor shall maintain the insurances referred to in Clause 26.1 and Clause 26.2 for a minimum of six (6) years following the expiration or earlier termination of the Framework Agreement.

27. **NOT USED.**

28. **TRANSFER AND SUB-CONTRACTING**

28.1 The Framework Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of I-FLAIR. The Contractor shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.

28.2 Each I-Flair Member shall be entitled to:-

28.2.1 assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any Other Contracting Body; or

28.2.2 transfer its interest in the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the relevant I-Flair Member;

provided that such assignment, novation or disposals shall not increase the burden of the Contractor's obligations under the Framework Agreement.

29. **VARIATIONS TO THE FRAMEWORK AGREEMENT**

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule Part 6.

30. **RIGHTS OF THIRD PARTIES**

Save as provided in Clauses 4, 7 and 8.2 and the rights specified in the Framework Agreement for the benefit of Contracting Bodies, a person who is not party to this Framework Agreement ("Third Party") has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any Third Party.

31. **SEVERABILITY**

31.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed with the invalid provision eliminated.

31.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, I-FLAIR and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

32. **CUMULATIVE REMEDIES**

Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

33. **WAIVER**

33.1 The failure of any Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of any Party to exercise, or any delay in exercising, any right or remedy

shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.

33.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 35.

33.3 A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

#### 34. **ENTIRE AGREEMENT**

34.1 This Framework Agreement constitutes the entire agreement and understanding among the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement among the Parties in relation to such matters.

34.2 The Parties acknowledge and agree that in entering into this Framework Agreement they do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to a Party for such statements, representation, warranty or undertaking shall be for breach of contract under the terms of this Framework Agreement.

34.3 Nothing in this Clause 34 shall operate to exclude Fraud or fraudulent misrepresentation.

#### 35. **NOTICES**

35.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

35.2 Any notice or other communication which is to be given by a Party to another shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by facsimile transmission (confirmed by letter) or by email (confirmed by letter). Such letter, facsimile transmission or email shall be addressed to the other Party in the manner referred to in Clause 35.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of facsimile transmission or email or sooner where the other Party acknowledges receipt of such letters or facsimile transmission or email.

35.3 For the purposes of Clause 35.2, the address of each Party shall be:

35.3.1 For I-FLAIR:-

Address: I-FLAIR c/o

**[INSERT NOTICE DETAILS FOR THE FRAMEWORK ADMINISTRATOR]**

For the attention of:

Tel: **[INSERT NOTICE DETAILS FOR THE FRAMEWORK ADMINISTRATOR]**

Fax: **[INSERT NOTICE DETAILS FOR THE FRAMEWORK ADMINISTRATOR]**

Email: **[INSERT NOTICE DETAILS FOR THE FRAMEWORK ADMINISTRATOR]**

35.3.2 For Arklet Housing Association Limited:-

Address: Barrland Court, Barrland Drive, Giffnock, Glasgow, G46 7QD

For the attention of: Steve Chipchase, Technical Officer

Tel: 0141 620 1890

Fax: 0141 620 3044

Email: [SChipchase@arklet.org.uk](mailto:SChipchase@arklet.org.uk)

35.3.3 For Barrhead Housing Association Limited:-

Address: 60-70 Main Street, Barrhead, Glasgow, G78 1SB

For the attention of: Dougie McIntyre, Property Manager

Tel: 0141 881 0638

Fax: N.A.

Email: [douglasm@barrheadha.org](mailto:douglasm@barrheadha.org)

35.3.4 For Bridgewater Housing Association Limited :-

Address: 1<sup>st</sup> Floor, Bridgewater Shopping Centre, Erskine, PA8 7AA

For the attention of: Gary Stapleton, Technical Services Manager

Tel: 0141 812 2237

Fax: 0141 812 7154

Email: [GStapleton@bridgewaterha.org.uk](mailto:GStapleton@bridgewaterha.org.uk)

35.3.5 For Cloch Housing Association Limited:-

Address: 19 Bogle Street, Greenock, PA15 1ER

For the attention of: Andrew Cassels, Project Development Officer

Tel: 01475 783637

Fax: 01475 728647

Email: [A.Cassels@clochhousing.org.uk](mailto:A.Cassels@clochhousing.org.uk)

35.3.6 For Linstone Housing Association Limited :-

Address: 32 Burnbrae Avenue, Linwood, PA3 3DD

For the attention of: David Adam, Director of Housing & Property Services

Tel: 01505-382383



Fax: 01505-382384

Email: [DAdam@linstone.co.uk](mailto:DAdam@linstone.co.uk)

35.3.7 For Oaktree Housing Association Limited :-

Address: 41 High Street, Greenock, PA15 1NR

For the attention of: Brian Praties, Development Manager

Tel: 01475 807 000

Fax: 01475 807 022

Email: [b.praties@oaktreeha.org.uk](mailto:b.praties@oaktreeha.org.uk)

35.3.8 For Paisley South Housing Association Limited :-

Address: 64 Espedair Street, Paisley, PA2 6RW

For the attention of: Elaine Thomson, Depute Director / Technical Manager

Tel: 0141 889 7105

Fax: 0141 848 9434

Email: [elaine.thomson@psha.org.uk](mailto:elaine.thomson@psha.org.uk)

35.3.9 For Williamsburgh Housing Association Limited :-

Address: Ralston House, Cyril Street, Paisley, PA1 1RW

For the attention of: Owen McMillan, Maintenance Manager

Tel: 0141 887 8613

Fax: 0141 8486624

Email: [owen@williamsburghha.co.uk](mailto:owen@williamsburghha.co.uk)

35.3.10 For the Contractor:-

Address:

For the attention of:

Tel: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

35.4 A Party may change its address for service by serving a notice in accordance with this Clause.

## 36. DISPUTE RESOLUTION

36.1 If a dispute or difference arises under this Framework Agreement which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.

- 36.2 Subject to Clause 36.3, the Scottish courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Framework Agreement.
- 36.3 If any dispute or difference arises under the Framework Agreement, either Party may refer it to adjudication in accordance with Clause 36.4.
- 36.4 If a dispute of difference arises under this Contract which either Party wishes to refer to adjudication, then Part 1 of the Schedule to The Scheme for Construction Contracts (Scotland) Regulations 1998 (“the Scheme”) shall apply and for the purposes of the Scheme the nominating body shall be the Royal Institute of Chartered Surveyors in Scotland.

37. **APPLICABLE LAW**

This Framework Agreement shall be governed by and construed in accordance with the law of Scotland.

The parties hereto consent to the registration hereof for preservation and execution: IN WITNESS WHEREOF these presents typewritten on this and the **[INSERT NUMBER OF PAGES]** preceding pages together with the Schedule are executed on this and the following **[two]** pages as follows:

They are signed for and on behalf of Arklet Housing Association Limited

by .....	.....
position.....	Authorised Signatory
on .....2011	
at .....	
before the witness	
Full name.....	.....
Address.....	Witness
.....	

They are signed for and on behalf of Barrhead Housing Association Limited

by .....  
position.....  
on .....2011  
at .....  
before the witness  
Full name.....  
Address.....  
.....

.....  
Authorised Signatory  
  
.....  
Witness

They are signed for and on behalf of Bridgewater Housing Association Limited

by .....  
position.....  
on .....2011  
at .....  
before the witness  
Full name.....  
Address.....  
.....

.....  
Authorised Signatory  
  
.....  
Witness

They are signed for and on behalf of Cloch Housing Association Limited

by .....  
position.....  
on .....2011  
at .....  
before the witness  
Full name.....  
Address.....  
.....

.....  
Authorised Signatory  
  
.....  
Witness

They are signed for and on behalf of Linstone Housing Association Limited

by .....  
position.....  
on .....2011  
at .....  
before the witness  
Full name.....  
Address.....  
.....

.....  
Authorised Signatory  
  
.....  
Witness

They are signed for and on behalf of Oaktree Housing Association Limited

by .....  
position.....  
on .....2011  
at .....  
before the witness  
Full name.....  
Address.....  
.....

.....  
Authorised Signatory  
.....  
Witness

They are signed for and on behalf of Paisley South Housing Association Limited

by .....  
position.....  
on .....2011  
at .....  
before the witness  
Full name.....  
Address.....  
.....

.....  
Authorised Signatory  
.....  
Witness

They are signed for and on behalf of Williamsburgh Housing Association Limited

by .....  
position.....  
on .....2011  
at .....  
before the witness  
Full name.....  
Address.....  
.....

.....  
Authorised Signatory  
.....  
Witness

They are signed for and on behalf of [insert name of the Contractor]

by .....  
on .....2011  
at .....  
before the witness  
Full name.....  
Address.....  
.....

.....  
Director/Company Secretary/Authorised Signatory\*  
.....  
Witness

\* Delete as appropriate

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING FRAMEWORK AGREEMENT AMONG ARKLET HOUSING ASSOCIATION LIMITED, BARRHEAD HOUSING ASSOCIATION LIMITED, BRIDGEWATER HOUSING ASSOCIATION LIMITED, CLOCH HOUSING ASSOCIATION LIMITED, LINSTONE HOUSING ASSOCIATION LIMITED, OAKTREE HOUSING ASSOCIATION LIMITED, PAISLEY SOUTH HOUSING ASSOCIATION LIMITED, WILLIAMSBURGH HOUSING ASSOCIATION LIMITED AND [INSERT NAME OF CONTRACTOR]**

**SCHEDULE PART 1**

**SERVICES AND LOTS**

**PART A**

**THE STANDARD SERVICES**

<b>Lot Number</b>	<b>Description of the Standard Services</b>
1	The works described in the Schedule of Activities for Lot 1 (Roofing and External Walls) forming part of Document C of the ITT and the specification for Lot 1 (Roofing and External Walls) forming part of Document D of the ITT
2	The works described in the Schedule of Activities for Lot 2 (Windows and Door Installation) forming part of Document C of the ITT and the specification for Lot 2 (Windows and Door Installation) forming part of Document D of the ITT
3	The works described in the Schedule of Activities for Lot 3 (Bathroom and Floor Installation) and the specification for Lot 3 (Bathroom and Floor Installation) forming part of Document D of the ITT
4	The works described in the Schedule of Activities for Lot 4 (Gas Central Heating Installation) forming part of Document C of the ITT and the specification for Lot 4 (Gas Central Heating Installation) forming part of Document D of the ITT
5	The works described in the Schedule of Activities for Lot 5 (Painting) forming part of Document C of the ITT
6	The works described in the Schedule of Activities and Specification document for Lot 6 (Gas Maintenance) forming part of Document C of the ITT
7	The works described in the Schedule of Activities for Lot 7 (Landscape Maintenance) forming part of Document C of the ITT and the specification for Lot 7 (Landscape Maintenance) forming part of Document D of the ITT
8	The works described in the Schedule of Activities for Lot 8 (Electrical Installations) forming part of Document C of the ITT

**PART B**

**THE COMPETED SERVICES**

<b>Lot Number</b>	<b>Description of the Competed Services</b>

1	The same as for the Standard Services except that not all the terms of the proposed contract are laid down in this Framework Agreement.
2	The same as for the Standard Services except that not all the terms of the proposed contract are laid down in this Framework Agreement.
3	The same as for the Standard Services except that not all the terms of the proposed contract are laid down in this Framework Agreement.
4	The same as for the Standard Services except that not all the terms of the proposed contract are laid down in this Framework Agreement.
5	The same as for the Standard Services except that not all the terms of the proposed contract are laid down in this Framework Agreement.
6	The same as for the Standard Services except that not all the terms of the proposed contract are laid down in this Framework Agreement.
7	The same as for the Standard Services except that not all the terms of the proposed contract are laid down in this Framework Agreement.
8	The same as for the Standard Services except that not all the terms of the proposed contract are laid down in this Framework Agreement.

### **PART C**

#### **SERVICES FRAMEWORK LOTS**

Lot 1 (Roofing and External Walls)

Lot 2 (Windows and Door Installation)

Lot 3 (Bathroom and Floor Installation)

Lot 4 (Gas Central Heating Installation)

Lot 5 (Painting)

Lot 6 (Gas Maintenance)

Lot 7 (Landscape Maintenance)

Lot 8 (Electrical Installations)

### **PART D**

#### **CONTRACTOR'S LOTS**

**[DESCRIPTION OF CONTRACTOR'S LOTS TO BE INSERTED]**

**SCHEDULE PART 2****AWARD CRITERIA****Standard Services Award Criteria**

<b>Lot Number</b>	<b>Criterion</b>
1,2, 3, 4, 5, 6, 7 and 8	The Contracting Body will determine which contractor represents the most economically advantageous tender for its requirement by reference to the contractors' tender submissions for the framework, and may invite, in writing, that contractor to enter into a call off contract to carry out the works required, without any further competition between the contractors.

**Competed Services Award Criteria**

<b>Lot Number</b>	<b>Criterion</b>										
1,2, 3, 4, 5, 6, 7 and 8	<p>As set out in the ITT provided that for mini competitions the quality assessment will be based on scoring out of 100 with weightings within the following ranges (always adding up to 100):</p> <table> <tbody> <tr> <td>Service delivery</td> <td>(20 – 40%)</td> </tr> <tr> <td>Customer care and customer relations</td> <td>(10 – 20%)</td> </tr> <tr> <td>Method of carrying out works</td> <td>(15 – 50%)</td> </tr> <tr> <td>Added value</td> <td>(5 – 20%)</td> </tr> <tr> <td>KPI reporting and benchmarking</td> <td>(5 – 20%)</td> </tr> </tbody> </table>	Service delivery	(20 – 40%)	Customer care and customer relations	(10 – 20%)	Method of carrying out works	(15 – 50%)	Added value	(5 – 20%)	KPI reporting and benchmarking	(5 – 20%)
Service delivery	(20 – 40%)										
Customer care and customer relations	(10 – 20%)										
Method of carrying out works	(15 – 50%)										
Added value	(5 – 20%)										
KPI reporting and benchmarking	(5 – 20%)										

**SCHEDULE PART 3****PRICING MATRICES**

***[INSERT RELEVANT PRICING MATRICES SUBMITTED IN CONTRACTOR'S TENDER FOR EACH OF THE CONTRACTOR'S LOTS]***

- 1.1. The Contractor shall be invited annually by written notice from I-Flair to review the Contractor's pricing matrices ("the Refresh Invitation"). Subject to section 1.2 of this Schedule Part 3, the Contractor may review, revise or stand by the pricing matrices included within the Contractor's tender submission.
- 1.2. In the event that the Contractor seeks to increase the prices included within the Contractor's pricing matrices, the adjusted price shall not exceed the relevant rate specified in the version of the BCIS Housing Refurbishment Price Index applicable at the date of the Refresh Invitation in relation to that item.
- 1.3. The Contractor's pricing matrices as adjusted will be assessed by I-Flair in accordance with the price evaluation criteria specified in the Invitation to Tender. The revised price score shall be combined with the quality score allocated to the Contractor at the tender evaluation stage and the Contractor's ranking shall be adjusted accordingly.





**(1.2) Commencement Date:**

**(1.3) Price Payable by Customer in accordance with the Price Matrix**

**(1.4) Completion Date:**

**(1.5) Services Framework Lot:**

**(1.6) Call-Off Contract**

The Call-Off Contract shall be constituted as follows:

[The Call-Off Contract comprises this Order together with the following Call-Off Terms and Conditions which are hereby incorporated into this Order:

*[insert details of the Call-Off Terms and Conditions which are permitted in terms of the Framework Agreement]]*

[The parties shall within *[insert suitable period of up to 60 calendar days]* of the Contractor signing and returning a copy of this Order complete and execute a formal contract comprising the following documents:

*[insert details of the Call-Off Terms and Conditions and other documentation permitted in terms of the Framework Agreement that will comprise the Call-Off Contract]]*

## **2 MINI-COMPETITION ORDER - ADDITIONAL REQUIREMENTS<sup>1</sup>**

**(2.1) Supplemental Requirements in addition to Call-Off Terms and Conditions:**

<sup>1</sup> Applicable if mini-competition is used under Clause 7

**(2.2) Variations to Call-Off Terms and Conditions**

**3. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]**

**(3.1) Key Personnel of the Contractor to be involved in the Services [and Deliverables]:**

**(3.2) Performance Standards**

**(3.3) Location(s) at which the Services are to be provided:**

**(3.4) Quality Standards**

**(3.5) Contract Monitoring Arrangements**

**BY SIGNING AND RETURNING THIS ORDER FORM THE CONTRACTOR AGREES** to enter a legally binding contract with the Customer to provide to the Customer the Services specified in this Order Form (together with, where completed and applicable, the mini-competition order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Contractor and I-FLAIR on [ ] 20[ ].

For and on behalf of the Contractor:-

Name and Title ( <i>block capitals</i> )	
Signature	
Date	

For and on behalf of the Customer:-

Name and Title ( <i>block capitals</i> )	
Signature	
Date	

**SCHEDULE PART 5**  
**CALL-OFF TERMS AND CONDITIONS**

<b>Lot Number</b>	<b>Contract Form</b>
1, 2, 3, 4, 5, and 8	SBCC Minor Works Building Contract With Contractor's Design for use in Scotland (amended to include for provision of (a) collateral warranties in the form produced by the SBCC and (b) a performance bond in a form acceptable to the contracting I-Flair Member)
6	SBCC Measured Term Contract
7	ACE/CECA Infrastructure Conditions of Contract (Measurement Version)

## **SCHEDULE PART 6**

### **FRAMEWORK AGREEMENT VARIATION PROCEDURE**

#### **1. Introduction**

- 1.1 Schedule Part 6 details the scope of the variations permitted and the process to be followed where I-FLAIR proposes a variation to the Framework Agreement.
- 1.2 I-FLAIR may propose a variation to the Framework Agreement under Schedule Part 6 only where the variation does not amount to a material change in the Framework Agreement or the Services.

#### **2. Procedure for proposing a Variation**

- 2.1 Except where paragraph 5 applies, I-FLAIR may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, I-FLAIR shall serve each Services Framework Contractor with written notice of the proposal to vary the Framework Agreement (“Notice of Variation”).
- 2.3 The Notice of Variation shall:-
  - 2.3.1 contain details of the proposed variation providing sufficient information to allow each Services Framework Contractor to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
  - 2.3.2 require each Services Framework Contractor to notify I-FLAIR within 7 days (or such other period as I-Flair may specify) of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 Upon receipt of the Notice of Variation, each Services Framework Contractor has 7 days to respond in writing with any objections to the variation.
- 2.5 Where I-FLAIR does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, I-FLAIR may then serve each Services Framework Contractor with a written agreement detailing the variation to be signed and returned by each Services Framework Contractor within 7 days of receipt.
- 2.6 Upon receipt of a signed agreement from each Services Framework Contractor, I-FLAIR shall notify all Services Framework Contractors in writing of the commencement date of the variation.

#### **3. Objections to a Variation**

- 3.1 In the event that I-FLAIR receives one or more written objections to a variation, I-FLAIR may:-
  - 3.1.1 withdraw the proposed variation; or
  - 3.1.2 propose an amendment to the variation.

#### **4. Changes to the Pricing Matrices**

- 4.1 Where a Services Framework Contractor can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, I-FLAIR may require further evidence from the Services Framework Contractor that any additional costs to the Services Framework Contractor will be kept to a minimum.

- 4.2 I-FLAIR may require the Services Framework Contractor to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.
- 4.3 Where a change to a Services Framework Contractor's Pricing Matrices is agreed by I-FLAIR, I-FLAIR shall notify its acceptance of the change to the Services Framework Contractor in writing.
- 4.4 In the event that I-FLAIR and the Services Framework Contractor cannot agree to the changes to the Pricing Matrices, I-FLAIR may:-
  - 4.4.1 withdraw the variation; or
  - 4.4.2 propose an amendment to the variation
- 5. **Variations which are not permitted**
- 5.1 In addition to the provisions contained in paragraph 1.2, I-FLAIR may not propose any variation which:-
  - 5.1.1 may prevent one or more of the Services Framework Contractors from performing its obligations under the Framework Agreement; or
  - 5.1.2 is in contravention of any Law.