

I-Flair Joint Working to establish a Common Framework Agreement for procuring Planned and Cyclical Maintenance work 2016 - 20

Heads of Terms Agreement

1.0 Scope of the commitment / agreement

- 1.1 This framework agreement will enable participating I-Flair members to work together to procure planned, cyclical and maintenance work during the period of the agreement.
- 1.2 The period of the Agreement will be from xxth March 2016 until the completion of all work identified to be procured under the framework that is instructed prior to the end of the Framework Term (31st March 2020). Members will be able to complete their maintenance programmes under the terms of this agreement, up to and including all work planned for 2019 / 20, with some work continuing into 2020 / 21, or beyond.
- 1.3 This framework covers a broadly similar range of work as was covered by the previous (2012 – 2016) framework. Based on a review of the operation of that framework, the new (2016 – 2020) framework, has been structured to allow for the collection and analysis of cost, quality and performance information, in relation to each completed call off. I-Flair will use this data to establish the cost effectiveness of the Framework as a means of procuring works, goods and services. Individual members of the consortium may use the data to inform decisions as to the most appropriate procurement route for their respective organisations and in the creation and any future I-Flair procurement frameworks.
- 1.4 The members of I-Flair agree to work in partnership to
 - 1.4.1 Establish a framework agreement in compliance with prevailing procurement legislation, to be able to procure all identified planned and cyclical during the period of the agreement.
 - 1.4.2 Commit to the use of and buying all such work from the framework as the default option, whenever that is appropriate.
 - 1.4.3 Understand and comply with the rules of the framework
 - 1.4.4 Support and contribute to the development, administration and management of the framework, including providing all necessary information to the Framework Administrator, as and when it is required

2.0 The participating members of I-Flair are as follows

- 2.1 Arklet Housing Association
- 2.2 Barrhead Housing Association
- 2.3 Bridgewater Housing Association
- 2.4 Cloch Housing Association

- 2.5 Linstone Housing Association
 - 2.6 Oaktree Housing Association
 - 2.7 Paisley South Housing Association
 - 2.8 Williamsburgh Housing Association
- 2.9 The Contracting Party in terms of the Framework Agreement [but not for individual call-offs from the framework] will be “I-Flair”, in the joint names of all members.

3.0 New members – criteria for joining

- 3.1 The framework will be open for additional members to join subject to the scope of any additional work being promoted by potential new members falling within the terms of the framework and
- 3.1.1 The potential new member agreeing to pay a joining fee to recognise the appropriate share of the value of the asset that existing members have invested in by establishing and operating the Framework to the point where the new member will join. Any such joining fee payable in recognition of the value of the asset will be shared equally amongst the existing members. The value of the said joining fee will be set as and when any such application is received, at the sole discretion of the existing members, acting reasonably. Such a fee would be based on a re-apportionment of the costs incurred by the existing members in establishing the framework, offset by a sliding scale, reflecting the point within the period of the framework, at which a new member might join.
 - 3.1.2 Providing that there is sufficient capacity, in terms of the value of work to be procured, in relation to the overall value of work to be procured via the framework. The framework administrator will provide all existing I-Flair Members with an assessment of any spare capacity, in terms of value, in relation to the framework, but the terms set for any new member to join (including, if appropriate, a maximum permitted value for call-offs made by the joining member, will be determined at the sole discretion of the existing members.
 - 3.1.3 Existing members of the Framework, acting unanimously, will require to be satisfied that the impact of a potential new member joining will not have an adverse effect on the operation, integrity or performance of the framework. This assessment will be at the sole discretion of the existing members, but will take into account any representations made by any potential new member in furtherance of their position.
 - 3.1.4 Any potential new member must demonstrate the benefits to the framework of their joining. This assessment, which will include governance checks of the potential new member, as well as an assessment of the programme of works they plan to procure via the framework, will be at the sole discretion of the existing

members (as represented by Senior Officers), but may also take into account any representations made by any potential new member in furtherance of their position.

- 3.1.5 New members must sign this agreement at the point of joining the framework

4.0 Full commitment by all participating

- 4.1 Each existing member and any new member joining the framework will confirm their commitment to the framework and endorse their agreement to be bound by the terms of the this agreement and the framework, by having this Heads of Terms approved by individual governing bodies as well as having the agreement signed by the Secretary of the organisation and witnessed by two Governing Body members (or two authorised signatories), prior to the 31st March 2016 or, in the case of a new member joining, at the point of joining the framework. The Heads of Terms agreement will be reviewed by the Framework Steering Group, in terms of the practicality of its operation, as and when required, with the review completed by 31st January each year to enable any revisions to be presented to each member for signing by the anniversary of the agreement. Any alterations to the existing agreement will become valid only after ratification by all members.
- 4.2 Furthermore, this Heads of Terms agreement may be reviewed on an “ad-hoc” basis (refer section 23.1 of this agreement), in terms of its ongoing relevance and application by all members at any time. Following any such “ad-hoc” review, any alterations to the existing agreement will become valid only after ratification by all members, with the prevailing agreement remaining in force until such time as any new agreement has been endorsed by all members.
- 4.3 It should be noted that the period of operation of the framework runs beyond the Term of the Framework, until the completion of any work procured under the framework.
- 4.4 It is expected that acceptance of these Heads of Terms will require to be endorsed unanimously by the governing bodies. In the event that a member does not sign these Heads of Terms, that member will not be entitled for any refund of payments made towards the establishment of the framework and will be liable for their full share of the balance of any such costs, not yet invoiced
- 4.5 Decision making in respect of the direction, strategic matters and major expenditure items in relation to the operation of I-Flair, is delegated to Senior Officers and decisions will be made by simple majority.
- 4.6 Operational decision making and the incurring of minor expenditure is delegated to the Framework Steering Group and such decisions will be

made by simple majority. The Senior Officers will determine what levels of expenditure may be delegated to the Group

- 4.7 In agreeing to these Heads of Terms, each member agrees to be bound by the obligations set out on the I-Flair Framework Agreement Document and its accompanying schedule, produced on I-Flair's behalf, by Maclay Murray and Spens.

5.0 Apportionment of costs

- 5.1 All third party costs are to be shared equally amongst all members (currently 1/8th share for each member).
- 5.2 Arrangements for the reimbursement of the cost of staff time in establishing and operating the framework will be as follows
 - 5.2.1 For any individual who is carrying out work on behalf of all members, the time required for the task will be recorded, costed and invoiced quarterly. The rate charged shall include an overhead factor and shall be £50.00 per hour for any work carried out during 2015 / 16. The charge rate will be increased annually based on CPI for December each year, as published by the United Kingdom Government, or other agreed increase, as determined unanimously by I-Flair Senior Officers. VAT will be charged on these costs based on the providing member's interpretation of prevailing HMRC guidance, on the basis that the providing member is supplying a service to other members. Such costs will be shared equally amongst all members.
 - 5.2.2 Where a group of individuals, such as the Framework Steering Group, are charged by the group with the carrying out of specific tasks, the time involved will be recorded and costs calculated as stated above. All members, as represented by the Senior Officers of each organisation will determine how these costs will be apportioned. Costs will be shared equally by all members.
 - 5.2.3 Staff time for attendance at meetings where all members are invited will be borne by each individual member, subject to review by Senior Officers in the event of, for example, repeated non-attendance by any member

6.0 Payment Arrangements

- 6.1 Where major expenditure is incurred and costs are to be shared, one member will be nominated as the client representative / instructing member for this package of work or service. Costs incurred in respect of major expenditure should, where possible, be invoiced in equal shares to all members by the third party service provider. Where this is not possible, or for minor expenditure items, the invoice should be issued to the instructing member for payment, with the instructing member then

recovering the appropriate share of costs from all other members, on an equal share basis.

7.0 Potential challenge under procurement legislation

- 7.1 In the event of a challenge relating to the establishment or operation of the framework, all members will share equal responsibility for responding to any such challenge, meeting any costs associated with responding to or defending such a challenge and shall be equally liable for any penalty that might be imposed as a consequence of a successful challenge.
- 7.2 In the event of a general challenge to the framework, in terms of the value of works procured through the framework, for example, the 23.0 Variation and Determination clause of this agreement shall apply.
- 7.3 Any matters relating to call-offs or subsequent contractual matters arising from call-offs from the framework are the individual and sole responsibility of the member (or members) carrying out the call-off or subsequently entering into a contract.

8.0 Timescale

- 8.1 The target date for establishing the framework agreement is 31st March 2016. It is recognised that this is a challenging target and that some slippage of this date might occur.

9.0 Commitment to provide staff resources to support the development and operation of the frameworks

- 9.1 All members commit to providing such resources as are necessary to complete all packages of work identified in the I-Flair project plan prepared and updated by A.D.A Construction Consultants Ltd. Furthermore, all members commit to provide staff time necessary for the operation of the framework and to fully support the role of the Framework Administrator.
- 9.2 Where, for specific reasons, any member (or members) identifies that they are unable to provide the staff resources that are necessary, then the remaining members, acting reasonably, may determine that such members will be responsible for meeting their share of the costs incurred by other members in carrying out any work done on their behalf. Such members will, however, remain directly responsible for meeting any third party costs incurred as a direct consequence of their inability to resource the necessary work. Any such third party costs will be invoiced directly to the member who is unable to provide the necessary resource.
- 9.3 I-Flair Senior Officers commit to meet at least twice per annum during the term of the framework, to receive and consider a report from the Framework Administrator on the status of the Framework, to review the

commitment of each member to use the framework and to decide on matters of policy and strategy.

10.0 Allocation of work

10.1 The allocation of packages of work amongst members will be the responsibility of the Framework Steering Group. Where a member is unable to provide the necessary resource, alternative in-house or third party arrangements will be made by the Framework Steering Group to re-allocate such work. The costs arising from the re-allocation of such work will be:

10.1.1 For work undertaken by other members – Staff time (based on timesheet records), charged at £50 per hour for any work carried out during 2015 / 16. The charge rate will be increased annually based on CPI for December each year, as published by the United Kingdom Government, or other agreed increase, as determined unanimously by I-Flair Senior Officers. VAT will be charged on these costs based on the providing member's interpretation of prevailing HRMC guidance, on the basis that the providing member is supplying a service to other members.

10.1.2 For work undertaken by a third party – the value of the invoice raised by that third party (including VAT), in respect of the work undertaken.

11.0 Establishment of framework to be supported by a procurement specialist(s)

11.1 Members, as represented by Senior Officers, agree to appoint, from time to time, such consultants and special advisors as necessary to inform and support the development and operation of the framework, in order to ensure that the framework is legally compliant and attractive to the market. This agreement shall include a schedule (below) of consultants appointed and their designated role

11.1.1 Support and guidance for the establishment of the framework
- A.D.A Construction Consultants Ltd

11.1.2 Support with tender Documentation - A.D.A Construction Consulting

11.1.3 Financial appraisal of contractors (additional service) -Dunn and Bradstreet risk rating check by Paisley South HA, review of contractors' accounts by Arklet HA

11.1.4 Producing Framework Agreement documents for signing - Maclay Murray & Spens

11.1.5 Provision of additional guidance on the use of the framework (additional service) – A.D.A Construction Consultants and Williamsburgh HA

12.0 Programme information.

12.1 Each member is required to provide, at the outset, a comprehensive, realistic and fundable five year programme of works that are suitable for inclusion in the framework.

12.2 The Framework Administrator will review the content of such work plans and aggregate them into a consolidated programme of work to be included within the framework. The Framework Administrator, in conjunction with A.D.A Construction Consultants, will allocate each package of work into the most appropriate “Lot” within the Framework. Individual members are required to liaise with and support the Framework Steering Group and Framework Administrator in respect any potential changes in timing of elements of these work programmes, where such changes would be to the benefit of the members. Any member who believes themselves to have been disadvantaged by any such change should, in the first instance, raise their concerns with the Framework Steering Group or Framework Administrator. If the concerns cannot be satisfactorily resolved by this means, then matters will be dealt with under the dispute resolution procedures forming part of this agreement

12.3 Each member is also required to inform the Framework Steering Group and the Framework Administrator of any changes in terms of the scope, nature or value of any works packages identified within the framework programme of work and also to report any instances where the member might be unable to execute any work identified in the framework programme of work.

12.4 The scope of work covered by the framework cannot be increased without the agreement of the Framework Administrator. Any potential reduction in the scope of works must be reported to the framework administrator immediately it becomes apparent. The Framework Administrator will monitor the programme of work covered by the framework and provide advice to any member in relation to the programme and value of work being procured from the framework.

13.0 Call-offs

13.1 Individual members are responsible for “calling-off” each work package. They must inform the Framework Administrator 6 weeks in advance of the call-off. Call-offs can be “direct” or by “mini-competition”, in accordance with the rules of the framework. Members attention is specifically drawn to Clause 7 Award Procedures of the Framework Agreement document, in this regard. The member operating the “call-off”

is the “contracting party” for the work “called-off” and is solely responsible for the form, scope and administration of the contract governing each package of work, having due regard to the forms of contract permitted by the terms of the Framework. Furthermore, the member operating the “call-off” is responsible for implementing in full, the processes set out in Schedule Part 7 of the Framework Agreement and its associated Annex A, in relation to KPI reporting and the delivery of Community Benefits, by means of the framework.

13.2 The framework is structured in such a way that members procuring from the framework can procure on a “supply and install” basis or alternatively, where requested, source the components outwith the framework and procure through the framework on an “install only” basis. When intimating the intention to procure work through the framework to the Framework Administrator, the member procuring must identify whether the call-off is “supply and install” or “supply only”.

14.0 Scope for procuring jointly via the framework

14.1 There is scope for members to agree to procure jointly, under the terms of the framework, but any such joint procurement can only be implemented under the rules of the framework (i. e. Call-off by Competed Services (Clause 7.3 of the Framework Agreement document) will be required). Relationships and responsibilities between the jointly procuring parties, together with satisfactory contractual arrangements, must be agreed between the parties and be in accordance with the terms of the framework. When intimating the intention to procure work through the framework to the Framework Administrator, the member procuring must identify any joint procurement initiatives.

14.2 The opportunity to procure jointly under the framework is limited to members who are members of I-Flair. Members are not permitted to procure jointly under the terms of this framework, with any organisation who is not a member of I-Flair.

15.0 Framework Administrator role

15.1 I-Flair Senior Officers will agree the Job Description for the Framework Administrator and confirm the appointment of either an external agent, or one of the members, to perform this role together with a Service Level Agreement. The role of the Framework Administrator will include monitoring of framework, ensuring annual price refreshes and contractor performance reviews are carried out, collating performance information and reporting on KPI’s, publicity and marketing. The Framework Administrator will be empowered to act with the full authority of all members and will be fully supported by the group. Where necessary the appointment of a Framework Administrator will be preceded by a suitable procurement.

15.2 Once agreed by I-Flair Senior Officers, the Job Description for the Framework Administrator shall be added, as an appendix, to this agreement.

15.3 The composition, roles and responsibilities of the Framework Steering Group will also be defined by the I-Flair Senior Officers at the commencement of the framework term and reviewed periodically, from time to time, thereafter.

16.0 Members representative

16.1 Each member should list their representatives' details (minimum Senior Officer and one other), at the "25.0 Signature and Seal" section of this agreement. The named representatives must be suitably qualified / experienced to represent and act with the fully authority of that member.

16.2 For individual meetings or work activities, any member can substitute a representative with an alternative, provided they are suitably qualified / experienced to represent and act for and on behalf of that member.

16.3 If, as a consequence of changes in personnel, any member requires to change their representative at any level, all other members and the Framework Administrator should be advised in writing. The replacement representative should be suitably qualified / experienced to represent and act with the fully authority of that member.

17.0 Rules for sharing of documents / information

17.1 Members of I-Flair are permitted to discuss I-Flair's strategy and historic decisions with third parties, at an informal level, in support of the general principle and practices of sharing information between social housing providers/partners. Matters that are currently under consideration, however, must be treated "in-confidence".

17.2 The general purpose and intent of information catalogued or documents produced in connection with this procurement exercise can also be discussed informally with third parties, but no document produced in pursuance of the work of I-Flair can be copied to, shared with or provide to any third party, save that such materials are necessary to benefit such a third party's work or services in support of I-Flair.

17.3 All members must recognise that the work of I-Flair and the documentation produced on behalf of I-Flair has a value that is shared by all members. The release of such documents is only permitted where the pecuniary value of the document has been established and agreed by Senior Officers. The Senior Officers must, in turn, agree to the release of any such documents and the basis upon which they are released.

17.4 In working with documents produced or supplied by third parties working in support of I-Flair, all members must acknowledge and comply with the rules of copyright, such as they apply to said documents.

18.0 Confidentiality

18.1 No member shall divulge or communicate to any person, and shall ensure that its employees shall not divulge or communicate to any person (other than those whose province it is to know the same or with proper authority) any confidential information of, or relating to the Framework, save as may be necessary for the performance of this agreement. This restriction shall continue to apply after termination of the Agreement and without limit in point of time. It also applies to any member who leaves the consortium during the term of the framework. During the continuance of this Agreement, no member shall enter into a contract with any other party which may conflict with its obligation to perform and meet the terms of this Agreement.

19.0 Legal

19.1 This Agreement is subject to the registered Rules of the members and to any other rules or regulations, statutory or otherwise, affecting the members.

19.2 No member may assign or transfer all, or part, of this agreement without the prior written consent of the other parties.

20.0 Recovery of additional costs

20.1 If the actions or inactions of any member result in disproportionate costs being incurred by another member, or by the Framework Administrator, then the recovery of such additional costs will be the responsibility of the parties involved, acting reasonably.

21.0 Member wishing to leave the framework

21.1 In endorsing this Heads of Terms agreement, each member is making a commitment to actively participate in the framework throughout its full term. In the event of any member believing it has no option but to leave the framework, the member in question shall give all other members and the framework administrator 12 months written notice of their intention. This period of notice is to enable other members to assess the potential impact on the framework and value of works being procured through the framework as a consequence of the departure of said member. Should the other members of I-Flair decide, by simple majority, that departure of the member giving notice of its desire to leave the framework will result in the remaining members being materially disadvantaged, then the remaining members shall give written notice to the member wishing to

leave the framework that such member will require to underwrite any losses incurred by the remaining members

21.2 Any member leaving the framework shall remain liable to the other members for all obligations under this agreement, for the full duration of the framework and the duration of any work called off from the framework and, specifically, shall individually be liable for meeting all costs associated with any challenge under prevailing procurement legislation that is a direct consequence of that member leaving the framework.

22.0 Dispute resolution procedures

22.1 Should any dispute or grievance with any member arise regarding the Agreement, including failure by a member to support the framework administrator, then parties will in the first instance seek the amicable resolution of such matters. Where such disputes cannot be resolved amicably between the parties, then either party may refer to the following course of action.

22.1.1 A specific letter to the other party (or parties) referring to this section of this agreement requesting that it meet its obligations under this Agreement or requesting consultation on an unresolved grievance or dispute arising from the Agreement.

22.1.2 Referral to a meeting of representatives of the members.

22.1.3 If, after one month, the matter has not been satisfactorily resolved, the aggrieved party has the right to refer the matter to the Governing Body of the respondent parties. The respondent parties must include the item on the agenda of their next Governing Body meeting to seek instruction. If a resolution is not achieved as a result of such a Governing Body meeting, the parties shall immediately appoint an independent adjudicator in accordance with 'd)' below.

22.1.4 If the matter is not resolved as above, then the parties must mutually appoint an independent adjudicator, the cost of which must be borne as decided by the adjudicator. The outcome of the adjudication will be final and binding on all parties. No party shall be entitled to raise any right of set-off, counter claim or abatement in connection with any proceedings taken to enforce the adjudicator's decision.

22.1.5 The parties to this agreement consent to the registration of any decision of the adjudicator for preservation and execution.

23.0 Variation and Determination

23.1 Any terms of this Agreement may be altered, deleted or added to, subject to written agreement by all members (refer also Clause 4.2 of this agreement). The Agreement may be terminated in writing as follows:

- a) On completion of all work procured under the framework
- b) By all members signing a new Agreement

23.2 If at any time any member considers another member to be in material breach of this agreement, they shall be entitled, having first, within 3 working days, advised all other members, to serve written notice on the other party requiring the breach to be remedied within two weeks of the date of the notice, or other period as may be considered necessary, but in any event not exceeding one month.

23.3 In the event of the party in receipt of the notice, failing to remedy the breach, within the period specified in the notice, the other members acting reasonably, shall be entitled, subject to further written notice of one month to exclude that member from the framework. Any member so excluded shall remain liable to the other members for all obligations under this agreement and, specifically, shall be individually liable for meeting all costs associated with any challenge under prevailing procurement legislation that is a direct consequence of that member being excluded from the framework

23.4 On any party dissolving or merging with another body corporate, but only where the agreement may be subject to renegotiation on a basis mutually acceptable to all members.

23.5 On any member ceasing to operate within the law.

23.6 On any member acting ultra vires.

23.7 Termination shall not determine the operation of any provisions of the agreement, which remain capable of operation, after termination.

24.0 Exclusions

24.1 In signing this agreement, members acknowledge that this agreement does not cover

24.1.1 The sharing of or providing services between member organisations

24.1.2 The management or operation of call-offs from the framework

24.1.3 Entering into individual work contracts

- 24.1.4 The subsequent administration of contracts based on call-offs from the framework
- 24.1.5 Any work, services or supplies not included in the framework

25.0 Signature and Seal

25.1 In witness whereof these present consisting of this and the preceding pages are executed as follows :

25.2 On behalf of Arklet Housing Association Ltd.

Signed at Barland Court, Barland Drive, Glasgow G46 7QE (place)

on _____ (date) and subscribed on their behalf by :

Signature : _____ (Secretary)

Signature : _____ (Committee Member)

Signature : _____ (Committee Member)

Arklet HA Representative 1 (Director) :

Arklet HA Representative 2 :

25.3 On behalf of Barrhead Housing Association Ltd.

Signed at 60 - 70 Main Street, Barrhead, East Renfrewshire G78 1SB (place)

on _____ (date) and subscribed on their behalf by :

Signature : _____ (Secretary)

Signature : _____ (Committee Member)

Signature : _____ (Committee Member)

Barrhead HA Representative 1 (Director) :

Barrhead HA Representative 2 :

25.4 On behalf of Bridgewater Housing Association Ltd.

Signed at 1st Floor, Bridgewater Shopping Centre, Erskine PA8 7AA (place)

on _____ (date) and subscribed on their behalf by :

Signature : _____ (Secretary)

Signature : _____ (Committee Member)

Signature : _____ (Committee Member)

Bridgewater HA Representative 1 (Director) :

Bridgewater HA Representative 2 :

25.5 On behalf of Cloch Housing Association Ltd.

Signed at 19 Bogle Street, Greenock PA15 1ER (place)

on _____ (date) and subscribed on their behalf by :

Signature : _____ (Secretary)

Signature : _____ (Committee Member)

Signature : _____ (Committee Member)

Cloch HA Representative 1 (Director) :

Cloch HA Representative 2 :

25.6 On behalf of Linstone Housing Association Ltd.

Signed at 17 Bridge Street, Linwood, PA3 3DB (place)

on _____ (date) and subscribed on their behalf by :

Signature : _____ (Secretary)

Signature : _____ (Committee Member)

Signature : _____ (Committee Member)

Linstone HA Representative 1 (Director) :

Linstone HA Representative 2 :

25.7 On behalf of Oak Tree Housing Association Ltd.

Signed at 41 High Street, Greenock PA15 1NR (place)

on _____ (date) and subscribed on their behalf by :

Signature : _____ (Secretary)

Signature : _____ (Committee Member)

Signature : _____ (Committee Member)

Oaktree HA Representative 1 (Director) :

Oaktree HA Representative 2 :

25.8 On behalf of Paisley South Housing Association Ltd.

Signed at 64 Espedair Street, Paisley PA2 6 RW (place)

on _____ (date) and subscribed on their behalf by :

Signature : _____ (Secretary)

Signature : _____ (Committee Member)

Signature : _____ (Committee Member)

Paisley South HA Representative 1 (Director) :

Paisley South HA Representative 2 :

25.9 On behalf of Williamsburgh Housing Association Ltd.

Signed at Ralston House, Cyril Street, Paisley PA1 1RW (place)

on _____ (date) and subscribed on their behalf by :

Signature : _____ (Secretary)

Signature : _____ (Committee Member)

Signature : _____ (Committee Member)

Williamsburgh HA Representative 1 (Director) :

Williamsburgh HA Representative 2 :

25.10 On behalf of Ferguslie Park Housing Association Ltd.

Signed at The Tannahill Centre, 76 Blackstoun Rd, Paisley PA3 1NT (place)

on _____ (date) and subscribed on their behalf by :

Signature : _____ (Secretary)

Signature : _____ (Committee Member)

Signature : _____ (Committee Member)

Ferguslie Park HA Representative 1 (Director) :

Ferguslie Park HA Representative 2 :
