

## **FRAMEWORK AGREEMENT**

### **Relating to the provision of**

### **Trade Contract Works**

#### **PARTIES:**

- 1. THE STATES OF GUERNSEY acting by and through the Committee for Employment & Social Security (here to referred to as “Housing”), and**
- 2. Contractor**

**Housing**  
**Committee for Employment & Social Security**  
Edward T Wheadon House  
Le Truchot  
St Peter Port  
Guernsey  
GY1 3WH  
01481 224215

[www.gov.gg](http://www.gov.gg)

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**Agreement dated the**

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**Between:**

- |              |   |
|--------------|---|
| 1. 'Housing' | States of Guernsey acting by and through the Committee for Employment & Social Security (here to referred to as "Housing") whose address is at Edward T Wheadon House Le Truchot St Peter Port Guernsey GY1 3WH |
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|-----------------------|--|
| 2. 'Trade Contractor' |  |
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Company name & number:
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whose address for service is at: <sup>1</sup>
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**Background**

- A. Housing intends from time to time to procure the execution of Trade Contract Works in relation to the maintenance of its housing stock.
- B. Housing has appointed the Trade Contractor to its Tender List and may wish to engage the Trade Contractor to undertake Trade Contract Works and if so, it shall do so on the terms and subject to the conditions set out in this Agreement which is intended to be a framework agreement.

**Operative Provisions**

- 1. Definitions and interpretation

- 1.1 In this Agreement:

'Certificate of Satisfaction'

means the certificate (or letter) issued by the Designated Officer indicating that the Trade Contract Works have been completed and that all defects in those works have been made good or alternatively where no certificate or letter is issued, it shall be deemed to have been given on the date when the final payment is made to the Trade Contractor by Housing;

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<sup>1</sup> insert full business name [and if a company the Company number] [if a partnership all the partners names should be included] and the address where correspondence is to be sent.

'Commencement Date'	<sup>2</sup>
'Confidential Information'	<p>all information and data (of whatever nature and however recorded or preserved)</p> <ul style="list-style-type: none"> <li>▪ relating to this Agreement, Housing or the States of Guernsey, including its activities, disclosed by Housing, its representatives or advisors to the Trade Contractor; or</li> <li>▪ information contained in Trade Contract Documents, the Order or the Invitation to Tender; or</li> <li>▪ information that may come to the attention of or discovered by the Trade Contractor, under or in relation to this Agreement</li> </ul> <p>Confidential Information does not include information which</p> <ul style="list-style-type: none"> <li>▪ is generally available to the public, other than as a result of disclosure by the Trade Contractor or its employees, representatives or advisors contrary to their obligations of confidentiality;</li> <li>▪ becomes available to the Trade Contractor otherwise than under or in relation to this Agreement and is free of any restriction as to its use or disclosure</li> </ul>
'Construction Buying Gains Scheme'	the scheme developed by the States of Guernsey under which materials and goods shall be purchased from specified manufacturers or suppliers;
'Designated Officer'	the officer or officers authorised by Housing to exercise the rights and obligations of the designated officer contained in this Agreement;

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<sup>2</sup> Insert date for commencement of the framework agreement.

'Timetable'	<p>means either</p> <ul style="list-style-type: none"> <li>▪ the detailed week by week construction programme relating to all the works in a project involving a number of different trade contractors engaged by Housing, or,</li> <li>▪ where the works involve only the Trade Contractor, the timetable in which the Trade Contract Works are to be performed, specified in the Order;</li> </ul>
'Contract'	means the Order by Housing accepting the Trade Contractor's Tender or estimate in relation to the Trade Contract Works;
'Contract Rates'	means the Trade Contractors standard rates for the undertaking of Trade Contract Works and which shall be the basis on which prices for Trade Contract Works shall be calculated, being those rates notified to Housing at the time the Trade Contractor was appointed to the Tender List, as may be reviewed by agreement from time to time;
'the Contract Sum'	means the sum set out in the Order and payable in accordance with the provisions of this Agreement and the Order;
'the Contractors Documents'	any notes, reports, design, plan, specification, drawings or other documents originated by or on behalf of the Trade Contractor in connection with the Trade Contract Works;
'the Date for Commencement'	the date identified in the Order for the commencement of the Trade Contract Works or, where there is no date in the Order, the date that Housing instructs the Trade Contractor to commence the Trade Contract Works;
'HS Code'	The Organisation and Management of Health and Safety in Construction approved under Section 13 of the Health & Safety at Work (General)(Guernsey) Ordinance 1987;

'Instruction'	A notice, direction or instruction issued to the Trade Contractor by the Designated Officer either in writing or verbally with written confirmation within five working days;
'Invitation to Tender'	the invitation (if any) issued by Housing to the Trade Contractor to tender for the Trade Contract Works;
'the Order'	Housing's written instruction to carry out the Trade Contract Works;
'Property Manager'	means Housing's Property Manager;
'Specification'	means the specification for the Trade Contract Works;
'Statutory Requirements'	<p>means, insofar as the same may apply to the Trade Contract Works,</p> <ul style="list-style-type: none"> <li>▪ all laws, enactments, consents (including planning consents), ordinances, orders in council, statutory instruments, any relevant European or United Kingdom legislation; and</li> <li>▪ any codes of practice or other guidance published under any of them; and</li> <li>▪ including, (without limiting the generality), the applicable laws and regulations listed under the heading 'Applicable Regulations' in the Schedule;</li> </ul>
'Tender'	the tender put forward by the Trade Contractor in response to an Invitation to Tender;
'Tender List'	means the list of contractors maintained by Housing to whom Orders to undertake Trade Contract Works (whether following an Invitation to Tender or not) may be given from time to time;
'Trade Contract Documents'	means any documents, drawings, performance requirements and other items attached to the Order or the Invitation to Tender;

‘Trade Contract Works’ means the works to be carried out by the Trade Contractor as specified in the Order or the Invitation to Tender;

‘Value Added Tax’ means tax imposed on the supply of goods and services (including that arising under the Value Added Tax Act 1994 or under European Union legislation) or any similar tax or replacement tax;

1.2 In this Agreement (including the Schedule) references to any enactment or statutory provision code of practice or relevant standard shall, unless the context otherwise requires, be construed as a reference to that enactment, statutory provision code or practice or relevant standard as from time to time amended, consolidated, modified, extended re-enacted, replaced or republished.

1.3 In this Agreement references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 The headings do not affect the construction of this Agreement.

## 2. Application of Terms

2.1 The provisions of this Agreement come into effect from the Commencement Date and shall continue unless and until terminated under Clause 18 of this Agreement.

2.2 The provisions of this Agreement, the Invitation to Tender, (subject to any amendments made by Housing to the Invitation to Tender), the Order and the Trade Contract Documents are the only conditions upon which Housing will deal with the Trade Contractor and they shall govern the framework arrangements between Housing and the Trade Contractor and each Contract, to the entire exclusion of all other terms and conditions.

2.3 Each Order for Trade Contract Works by Housing shall be deemed to be an offer by Housing to purchase the Trade Contract Works upon the terms of the documents set out in Clause 2.2. The Order shall be deemed to incorporate the provisions of this Agreement (whether expressed to do so or not in the Order). A Contract in respect of the Trade Contract Works shall come into effect when

2.3.1 the Trade Contractor has given written notice of acceptance of the Order, or

2.3.2 commences the Trade Contract Works and in which case the Trade Contractor shall be deemed to have accepted all the terms and conditions of the Contract.

2.4 No terms and conditions endorsed upon, delivered with or contained in the Trade Contractors quotation, Tender, acknowledgment or acceptance or order, or in any other document whatsoever will form part of the Contract and the Trade Contractor in

entering into the Contract waives any right that it might otherwise have to rely on such terms and conditions.

- 2.5 This Agreement applies to all the Orders placed by Housing with the Trade Contractor, and no variation to an Order or this Agreement or any Trade Contract Documents made after the date of the Order shall have effect unless expressly agreed in writing and signed by the Designated Officer and the Trade Contractor.

### 3. Appointment

#### 3.1 Housing

3.1.1 engages the Trade Contractor to carry out and complete Trade Contract Works on behalf of Housing, and

3.1.2 agrees to pay the Contract Sum to the Trade Contractor, on the terms and conditions contained in this Agreement

#### 3.2 The Trade Contractor agrees to comply with:

##### 3.2.1 the requirements of

- (a) the Invitation to Tender;
- (b) this Agreement;
- (c) the Specification;
- (d) the Order; and,
- (e) any other Trade Contract Documents,

using materials and workmanship of the quality, kinds and standards specified by those documents or the Designated Officer and to the extent that they are not specified, then they shall be of good and merchantable quality, comply with any functional specifications and shall be in any event to the reasonable satisfaction of the Designated Officer;

3.2.2 all Instructions issued by the Property Manager or the Designated Officer of Housing;

3.2.3 the Objectives and Performance Requirements set out in the Schedule;

3.2.4 all Statutory Requirements;

3.2.5 any drawings, design or specifications and other documents prepared or provided by or on behalf of the Trade Contractor and either annexed to the Order by Housing or authorised by the Property Manager or the Designated Officer for use.



#### 4. General Obligations of Trade Contractor

- 4.1 The Trade Contractor acknowledges that it shall be deemed to have full knowledge of the extent and nature of the Trade Contract Works and shall be deemed to have allowed for all items of work shown upon, described by or referred to in the Invitation to Tender, Order or other Trade Contract Documents or which are necessary to complete the Trade Contract Works.
- 4.2 The Trade Contractor shall, as and when requested so to do by the Designated Officer, provide the Designated Officer with all such information in regard to the Trade Contract Works as the Designated Officer may reasonably require.
- 4.3 The Trade Contractor shall exercise in the execution and completion of the Trade Contract Works, all the skill, care and diligence to be expected of a properly qualified and competent contractor experienced in constructing works of a similar scope, nature and size to the Trade Contract Works.
- 4.4 The Trade Contractor shall not, without the prior written consent of Housing, specify or cause to be used in relation to the Trade Contract Works the following materials:
  - 4.4.1 high alumina cement;
  - 4.4.2 woodwool slabs in permanent shuttering form;
  - 4.4.3 calcium chloride in blockwork or brickwork;
  - 4.4.4 asbestos products;
  - 4.4.5 aggregates which do not comply with BS882 and BS8110, and aggregates susceptible to alkali silica reaction;
  - 4.4.6 calcium silicate bricks and tiles;
  - 4.4.7 copper chrome arsenic in play areas;
  - 4.4.7 any other materials generally known at the time of specification to be prejudicial to health or safety or to the integrity of buildings or otherwise proscribed from time to time by Housing.
- 4.5 Where required by the terms of the Order or other Trade Contract Document
  - 4.5.1 to purchase specified goods and materials in relation to the Project under the Construction Buying Gains Scheme, and
  - 4.5.2 in which case, materials and goods not purchased through the Construction Buying Gains scheme may only be used with the prior consent of Housing;
  - 4.5.3 consent may be given only where Housing are satisfied that such materials and goods offer equal or greater value for money and equivalent or better functional characteristics.

- 4.6 In the provision of the Trade Contract Works, the Trade Contractor shall make the fullest possible use of local labour, materials and supplies. The use of any non-local labour is not permitted in the provision of the Trade Contract Works without the prior written approval of Housing. The use of non-local labour which has not been disclosed in the Tender or subsequently approved by Housing will be regarded as a material default of this Agreement and will entitle Housing to terminate this Agreement under the provisions of Clause 18.4.
- 4.7 The Trade Contractor shall comply with the requirements of relevant local legislation in respect of Income Tax and Social Insurance contributions, Housing Control and Right to Work. Any breach of this Clause 4.7 will be regarded as a material default of this Agreement and which will entitle Housing to terminate this Agreement under the provisions of Clause 18.4 and shall entitle Housing to remove the Trade Contractor from the Tender List.
5. Designated Officer
- 5.1 Housing will appoint one or more persons as the Designated Officer in respect of each Contract and may also remove them
- 5.2 Housing will notify the Trade Contractor of the identity of the Designated Officer and of any additional or replacement officers.
- 5.3 The Trade Contractor shall co-operate with the Designated Officer in the exercise of his role as co-ordinator of the Trade Contract Works, which may also include co-ordinating the activities of other contractors engaged on the same site.
6. Instructions
- 6.1 The Trade Contractor shall comply with all Instructions.
- 6.2 If the Trade Contractor does not comply with an Instruction within 7 days after receipt of a written notice from the Designated Officer requiring compliance with it, Housing may engage another contractor to execute any works necessary to give effect to that Instruction and the costs incurred shall be recoverable from the Trade Contractor and may be deducted from any monies due to the Trade Contractor.
- 6.3 The Designated Officer shall be entitled (but not obliged) to issue at any time before the Certificate of Satisfaction any Instruction in relation to the Trade Contract Works that the Designated Officer reasonably considers appropriate,
- 6.3.1 to postpone or recommence the Trade Contract Works or any part of them,
- 6.3.2 to open up or test any part of the Trade Contract Works,
- 6.3.3 to remove defective work, (and make good that defective work),

6.3.4 to accelerate or re-sequence the Trade Contract Works.

- 6.4 The cost of opening up for inspection or testing under Clause 6.3.2 and the cost of making good shall be added to the Contract Sum at the Contract Rates unless such cost is allowed for in the Order or Trade Contract Documents or unless any inspection or test shows that any work materials or goods are not in accordance with this Agreement.
- 6.5 The cost of removal of defective work or making good of any work or materials or goods which are not in accordance with this Agreement (notwithstanding any previous test or inspection) under Clause 6.3.3 shall be at the Trade Contractors own expense.
- 6.6 The costs incurred in connection with any Instruction under 6.3.1 or 6.3.4 shall not entitle the Trade Contractor to any additional sum or a higher rate than the Contract Rates unless stated in the Order.

## 7. Use of Documents

To the extent that the Trade Contractor owns the copyright or other intellectual property in the Contractors Documents, and subject to any condition attached to the Order, the Trade Contractor grants and agrees to grant to Housing an irrevocable royalty-free non-exclusive licence to use and reproduce the Contractors Documents in connection with the Trade Contract Works or the premises subject to the Trade Contract Works.

## 8. Statutory Obligations

- 8.1 The Trade Contractor shall comply with and give all notices required by any of the Statutory Requirements.
- 8.2 The Trade Contractor shall immediately supply to the Designated Officer copies of all notices, applications, approvals, consents and permissions and all documentation relating to them given or received by the Trade Contractor.

## 9. Site supervision and precaution

- 9.1 The Trade Contractor shall ensure that the Trade Contract Works are adequately and properly undertaken and supervised by suitably skilled, qualified and experienced persons. Instructions issued to the Trade Contractor's supervisor shall be treated as having been given to the Trade Contractor.
- 9.2 The Trade Contractor shall
- 9.2.1 take all responsible precautions during the carrying out of the Trade Contract Works to prevent nuisance or inconvenience by noise, vibration, dust or otherwise, to adjacent and neighbouring occupiers and to the general public;

- 9.2.2 comply with any specific instructions set out in the Invitation to Tender, Order or Trade Contract Documents as to the manner in which the Trade Contract Works are to be undertaken; and
- 9.2.3 only carry out the works between 8.00 a.m. – 5.30 p.m. Monday to Fridays, and not on bank or public holidays, unless working outside of these times has been approved by the Designated Officer.
- 9.3 The Trade Contractor shall:
- 9.3.1 maintain an up to date register of all operatives engaged on the Trade Contract Works
- 9.3.2 make copies of the register available to the Designated Officer on request
- 9.3.3 nominate an individual to be responsible for maintaining the register to the satisfaction of Housing.
- 9.4 The Trade Contractor shall ensure that all operatives engaged on the trade contract works are competent to perform any requirement of the contract to which they have been assigned and to maintain evidence of such competence.
10. Health and Safety
- 10.1 The Trade Contractor acknowledges that Housing are particularly concerned that the Trade Contract Works are carried out to best practice safety standards and in strict compliance with all statutory requirements relating to safety.
- 10.2 The Trade Contractor shall as a minimum requirement comply with the HS Code and with all rules and regulations if any issued to the Trade Contractor relating to conduct of work on the site and if relevant the Health and Safety Plan issued by the principal contractor on the site (as that expression is defined in the HS Code).
- 10.3 The Trade Contractor shall submit method statements to control risk exposure for any high risk activity including (but not limited to):
- demolition work or dismantling of structures
  - storage and the use of explosives
  - asbestos removal or maintenance involving asbestos products
  - designed scaffold systems
  - work on under or over water
  - work with compressed air
  - any work at height (as defined by the Work at Height Regulations 2005)
  - work involving any risk of exposure to substances hazardous to health

10.4 The Trade Contractor shall prepare a risk assessment that addresses risks to employees and to other persons who may be affected by Trade Contractor activities, e.g. members of the public or States employees'. The risk assessment must address the following three elements:

- Seriousness of the risks, probability of occurrence and potential impact
- Measures and arrangements that effectively manage the risk in a co-ordinated way
- Share that risk assessment with employees to ensure risks are understood and they take appropriate actions to minimise occurrence.

In cases where the Trade Contractor is a sole trader or small enterprise Housing will waive this requirement if the Trade Contractor can reasonably demonstrate that all due consideration and assessment of these risks in relation to the safety of the person carrying out the Trade Contract Works has been given.

10.5 All Trade Contractors employing 5 or more persons must have, by law, an effective Safety Policy which contains details of its organisational arrangements for implementing health and safety and the standards to which its employees/sub-contractors are required to work.

All Trade Contractors employing more than 20 persons or controlling an aggregate of 20 employees plus sub-contractors must have professional safety support.

This can be in the form of a competent (See Part V Section 18, Appendix 2. of the HS Code)) in-house safety manager, the use of shared professional resources with other companies or the retention of professional safety consultants.

## 11. Commencement and Completion

11.1 The Trade Contractor shall commence the Trade Contract Works on the Date for Commencement. The Trade Contractor shall proceed diligently with the Trade Contract Works and shall complete the Trade Contract Works within the Timetable. The Designated Officer may in his discretion, if he considers that there are appropriate reasons for doing so, extend the date for completion.

11.2 Housing will, at the Date for Commencement give to the Trade Contractor access to so much of the Site as may be required to enable the Trade Contractor to comply with it's obligations under Clause 11.1.

11.3 Unless otherwise specified in the Invitation to Tender or Order the Trade Contractor shall not have exclusive or uninterrupted access to any part or parts of the site.

## 12. Completion of the Works

- 12.1 When, in the opinion of the Designated Officer, the Trade Contract Works are practically complete, the Designated Officer shall issue the Certificate of Satisfaction (or make final payment), and the Trade Contract Works shall be treated as having been completed for all purposes of this Agreement on the date of the Certificate (or payment).
- 12.2 Following inspection of the works, the Designated Officer may give to the Trade Contractor a schedule of incomplete items of work and minor defects in the Trade Contract Works at the date of such inspection that are to be completed or made good immediately after such inspection. The Certificate of Satisfaction shall be issued (or final payment made) once the Trade Contractor has made good those items or work or defects.
- 12.3 Following the issue of the Certificate of Satisfaction (or final payment), the Trade Contractor shall remedy at its own cost and within fourteen days of being requested to do so by the Designated Officer (or such other person authorised by Housing) any defects shrinkages or other faults which may appear in the Trade Contract Works after the date of the Certificate of Satisfaction and before the expiry of the period of twelve months (or such other period stated in the Order) from the date of the Certificate of Satisfaction (or such other period if different as is set out in the Order) as are not due to frost occurring during that period, or to damage caused by a tenant of Housing or to fair wear and tear.
- 12.4 As a precondition to the issue of the Certificate of Satisfaction (or final payment), the Trade Contractor, without further charge to Housing, shall supply to Housing such drawings and information or guarantees in respect of the Trade Contract Works required to be supplied under the terms of the Order or Specification, or as may be required for Health and Safety purposes, or as Housing may reasonably require.
- 12.5 If the Certificate of Satisfaction has not been issued by the date for completion of the Trade Contract Works as stated in the Order, then without prejudice to any other right of Housing under this Agreement, Housing shall be entitled to recover from the Trade Contractor as liquidated damages for the delay the sum designated as liquidated damages set out in the Order for each week or part of a week by which the date of issue of the Certificate of Satisfaction is delayed beyond the date for completion as stated in the Order.
- 12.6 If,
- 12.6.1 the Order does not contain date for completion; and or
- 12.6.2 the Order does not contain a figure for liquidated damages,
- then Clause 12.5 shall not apply to the Trade Contract Works described in that Order.

## 13. Insurance

- 13.1 The Trade Contractor shall effect and maintain public liability insurance cover in respect of the Trade Contract Works in the sum set out in the Order (but if no sum is specified then for not less than £5 million for any one occurrence or series of occurrences arising out of one event) and shall insure loss or damage to any plant, equipment materials or tools owned or controlled by the Trade Contractor.
- 13.2 The Trade Contractor shall maintain employer's liability insurance cover of not less than £10 million to cover any claim in respect of the personal injury to or death of any person under a contract of service or apprenticeship with the Trade Contractor and arising out of and in the course of the person's employment in connection with Trade Contract Works. Those exempt from this level of insurance are the sole employee of a limited company who also owns at least 50% of the share capital of the company and sole traders who do not employ anyone (apart from close family members). However, as soon as single operators hire staff (temporary, seasonal or permanent) the appropriate insurance must be taken out.
- 13.2.1 If the Trade Contractor provides designs, specifications or general consultancy, Professional Indemnity Insurance of not less than £2 million is required.
- 13.3 The Trade Contractor shall insure against damage to property
- 13.3.1 belonging to Housing or
- 13.3.2 any occupier or tenant
- including any buildings, their contents and fixtures and fittings on the site on which the Trade Contract Works are being undertaken
- 13.4 The Trade Contractor will produce for inspection satisfactory documentary evidence of such insurance required by this Clause 13 and the payment of current premiums annually or when otherwise requested to do so by Housing.
- 13.5 The Trade Contractor will promptly inform the Designated Officer in writing of any accidents or claims against the Trade Contractor where such accident or claim arises in relation to the Trade Contract Works.

## 14. Contract Sum and Payment

- 14.1 The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of this Agreement.
- 14.2 Any schedules or quantities or other statements as to quantities of work which may at any time be supplied to the Trade Contractor shall be indicative only.

- 14.3 If there is any discrepancy between the Contract Rates and the rates set out in the Order, the rates set out in the Order shall apply. To the extent that no rates are set out in the Order the Contract Rates shall apply.
- 14.4 Unless otherwise agreed by Housing in exceptional cases only, the Trade Contractor shall base all its prices in relation to a Project on the Contract Rates.
- 14.5 Any reference to the Contract Sum or the Contract Rates or any rates in the Order shall unless otherwise expressly agreed in writing, be quoted or charged exclusive of Value Added Tax and no Value Added Tax shall be payable on the supply of services or goods or any Trade Contract Works under this Agreement.
- 14.6 The payment of the Trade Contract Works by Housing shall be made in accordance with any conditions set out in the Order and in so far as those conditions do not conflict, as follows:

#### Lump Sum Contracts

- 14.6.1 Where the Order states that the Contract Sum is payable as a lump sum, payment shall be made by Housing within 30 days of the receipt from the Contractor of a correct invoice for the amount of the Contract Sum, which may be presented not earlier than the date of the Certificate of Satisfaction or (if no Certificate is issued) when the Trade Contract Works have been completed to the satisfaction of the Designated Officer.

#### Instalments

- 14.6.2 Where the Order or Invitation to Tender states that the Contract Sum is payable by instalments, payment shall be made by Housing within 30 days of the receipt from the Contractor of a correct invoice for the amount of the instalment stated in the Order or Invitation to Tender provided that where the instalment relates to the completion of a specific stage of the Trade Contract Works the Designated Officer shall have certified to Housing that the stage to which the instalment relates has been reached and the work has been undertaken in accordance with this Agreement and to his satisfaction.
- 14.6.3 Where the Order or Invitation to Tender does not allow for Instalments, the Designated Officer may in his absolute discretion authorise payment of part of the Contract Sum to the Trade Contractor on account (and which may be subject to a retention of part of that payment on account), provided that not less than 25% of the Trade Contract Works shall have been completed in relation to the release of that part of the Contract Sum.



- 14.7 Unless otherwise agreed all prices set out in the Order shall be fixed prices and shall not be subject to adjustment and the Trade Contractor shall not be entitled to any additional payment in respect of the Trade Contract Works.
- 14.8 Stage payments will not be made for the supply of materials. Full payment will be approved only on receipt of the whole order and those materials have been incorporated into the Trade Contract Works such that any retention of title provision no longer applies to those materials.

## 15. Retention

- 15.1 Housing may in any Order include a requirement that part of the Contract Sum be held by way of retention and the release of that retention may be made subject to such conditions (if any) as Housing shall stipulate in the Order, or Invitation to Tender.
- 15.2 With regard to any amounts retained under this Agreement,
- (a) Housing may have recourse to any amounts deducted from time to time for payment of any sum to which Housing are entitled under this Agreement or otherwise at law, and to deduct or set off from any sum due or to become due to the Trade Contractor.
  - (b) The release of any sums retained will be paid to the Trade Contractor on the later of the dates of any condition set out in the Order and the completion or remedying of work or defects to the satisfaction of the Designated Officer pursuant to any schedule of defects given in accordance with this Agreement.
  - (c) No interest shall be payable on the release of any retention.

## 16. Concerning Certificates

- 16.1 No certificate issued pursuant to this Agreement shall of itself be conclusive evidence that any works, materials goods or design carried out by the Trade Contractor to which it relates are in accordance with the Contract.
- 16.2 Not later than ten days after the date on which a payment is due, Housing acting reasonably, may give notice (either verbally or in writing) to the Trade Contractor stating the amount that Housing propose to pay and the basis on which that amount is calculated. Where no such notice is given the amount to be paid is that stated in the Order or otherwise is due for payment.
- 16.3 Where Housing intend to withhold payment of any amount, written notice must be given to the Trade Contractor not later than ten days after the date that payment is due. The notice shall state the amount withheld and the grounds for withholding payment.

- 16.4 The Trade Contractor shall not be entitled to suspend performance of the Trade Contract Works in respect of any decision by Housing to withhold payment of any amount, under this Clause 16 unless the Trade Contractor shall have first given notice that it disputes the reason upon which Housing seek to exercise its right to withhold payment and requesting Housing to meet with the Trade Contractor to discuss the matter by way of the Dispute Resolution process set out in this Agreement.
- 16.5 If such negotiation shall fail to resolve the matter, the Trade Contractor may then give not less than 14 days notice of its intention to suspend performance.
- 16.6 The right of the Trade Contractor to suspend performance shall cease when
- (a) Housing makes payment of the amount due
  - (b) the dispute is resolved by means of the Alternative Dispute Resolution process, or
  - (c) this Agreement is terminated pursuant to any provision contained within it to terminate it.
- 16.7 The Trade Contractor shall not be entitled to any compensation under this Agreement or otherwise arising out of any suspension of the Trade Contract Works.
- 16.8 Payment by Housing to the Trade Contractor shall be without prejudice to any claims or rights that Housing may have against the Trade Contractor and neither payment nor a certificate by the Designated Officer shall constitute any admission by Housing as to the performance by the Trade Contractor of its obligations under this Agreement.
- 16.9 If either party fails to pay any amount payable under this Agreement, the other party shall be entitled (but not obliged) to charge interest on the overdue amount, payable on demand from the due date up to the actual date of payment, at the rate of 2% over the base rate of Bank of Scotland International Limited, and the interest shall accrue on a daily basis.

## 17. Liability and Indemnity

- 17.1 Housing will be relying upon the Trade Contractor's skill, expertise and experience and also upon the accuracy of all representations or statements made by the Trade Contractor in the Tender and the Trade Contractor agrees to indemnify and keep indemnified Housing against all costs, claims, demands, liabilities, expenses, damages or losses, (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising in connection with or relating to the Trade Contractor's negligence, default, or breach of this Agreement.
- 17.2 The Trade Contractor accepts:

17.2.1 liability for death or personal injury resulting from the Trade Contractor's negligence; and

17.2.2 liability for damage to property howsoever resulting from the Trade Contractor's negligence arising in connection with or related to the provision of the Trade Contract Works.

## 18. Termination

18.1 If Housing shall without lawful reason fail to pay to the Trade Contractor any sum from time to time owing by Housing to the Trade Contractor under this Agreement for 30 days after the due date for payment, or if Housing shall fail within 30 days after notice in writing of this has been given to Housing by the Trade Contractor to take steps to perform any of Housing's other obligations, the performance of which has become due under this Agreement, then the Trade Contractor may by written notice to Housing terminate this Agreement, and this Agreement and any Contract will then terminate upon the expiry of 30 days after receipt by Housing of the Trade Contractor's notice of its intention to terminate.

18.2 Housing may terminate this Agreement at any time on 30 days notice in writing to the Trade Contractor.

18.3 Housing may terminate this Agreement with immediate effect on written notice to the Trade Contractor if the Trade Contractor:

18.3.1 becomes bankrupt (if an individual) or goes into liquidation (if a Company), or becomes insolvent;

18.3.2 has an administrator or receiver of its undertaking appointed;

18.3.3 is declared 'en desastre' anywhere in the Bailiwick of Guernsey or has a preliminary vesting order made in respect of any real property in any part of the Bailiwick of Guernsey;

18.3.4 is in persistent breach of its obligations (whether material or not), fails to undertake or abandons the Trade Contract Works;

18.3.5 suspends the Trade Contract Works; or

18.3.6 is convicted of any criminal offence, or act, which may in the opinion of Housing may bring the Project or Housing into disrepute.

18.4 If Housing considers that the Trade Contractor is in material default of any of its obligations under this Agreement, Housing may give notice to the Trade Contractor in writing of the relevant alleged default and if the Trade Contractor shall not within 7 days after receipt of the State's notice:

18.4.1 commence to rectify such default or breach to Housing satisfaction; or

18.4.2 establish that the Trade Contractor is not in default under this Agreement;

then Housing may immediately either terminate this Agreement or terminate the Trade Contractors employment under the Contract by written notice to the Trade Contractor.

18.5 Upon any proper termination of this Agreement Housing shall pay to the Trade Contractor a fair and reasonable proportion of any sum due to the Trade Contractor in relation to any Trade Contract Works executed but not paid for then outstanding, (and subject to the right of Housing to set-off any sums incurred by Housing in remedying any breach or liability of the Trade Contractor), such amount if not agreed by the parties to be settled in accordance with Clause 25 and which shall be final and binding.

18.6 Upon any termination of this Agreement however arising:

18.6.1 the Trade Contractor shall promptly take all practicable steps to bring the Trade Contract Works to an end in an orderly manner with all reasonable speed and economy and at no additional cost to Housing, and

18.6.2 termination shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to the termination, and

18.6.3 in the case of a termination by Housing pursuant to Clause 18.3 and 18.4 Housing shall be entitled to appoint another contractor to complete the Trade Contract Works and the amount payable to that replacement Contractor for the completion of the Trade Contract Works including any additional or remedial works that are required as a result of any of the Trade Contract Works being defective or unsatisfactory and all additional and incidental costs incurred by Housing in relation to the opening up and testing of those works and or the appointment of the replacement contractor shall be due and payable by the Trade Contractor as a debt within 14 days of the amount becoming known to Housing and notified to the Trade Contractor.

## 19. Partnership

If the Trade Contractor is a partnership, each partner shall be jointly and severally liable under this Agreement.

## 20. Data Protection

The Trade Contractor shall comply with the provisions of the Data Protection (Bailiwick of Guernsey) Law 2017 and shall fully and effectively indemnify Housing from against any liability including any costs claims damages and penalties that it incurs as a consequence of any breach of that Law.

There may be occasions when Housing may need to disclose the personal data of its States house tenants' to contractors, to enable that contractor to carry out his duties. In accordance with the Data Protection (Bailiwick of Guernsey) Law, 2017, contractors may only use the data provided as instructed by Housing and shall take all necessary precautions to ensure that all confidential information is not disclosed to any other party without the prior written authority of Housing.

FURTHER DETAILS PROVIDED IN APPENDIX A.

## 21 Confidentiality

### 21.1 The Trade Contractor agrees

21.1.1 not to use Confidential Information except for the purpose of providing the Services and the provision of the Trade Contract Works;

21.1.2 not to use Confidential Information for its own purposes or so as to procure any commercial advantage over Housing;

21.1.3 not to disclose the Confidential Information to any third party, except in the proper performance of the Trade Contract Works;

and agrees to procure that any of its employees representatives or advisors are aware of the obligations of confidentiality and agree to comply with them.

21.2 The obligations of the parties under this clause 21 shall survive the expiry or the termination of this Agreement for whatever reason.

## 22. No inducement

### 22.1 The Trade Contractor warrants that it has not nor will:

(a) offer or give or agree to give any person in the employment of the States of Guernsey any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the States of Guernsey or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement, except that gifts may be provided in accordance with the States Guidelines on the acceptance of Gifts; nor

(b) enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person in the employment of the States of Guernsey by the Trade Contractor or on the Trade Contractor's behalf or to the Trade Contractor's knowledge, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to Housing.

- 22.2 In the event of any breach of this Clause by the Trade Contractor or the commission of any offence (including but not limited to the offence of bribery contrary to the customary law of Guernsey) by the Trade Contractor in relation to this Agreement, Housing may summarily terminate this Agreement by notice in writing to the Trade Contractor provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to Housing and provided always that Housing may recover from the Trade Contractor the amount or value of any such gift, consideration or commission.
- 22.3 The decision of Housing shall be final and conclusive in any dispute, difference or question arising in respect of:
- (a) the interpretation of this Clause 22 (except so far as the same may relate to the amount recoverable from Housing in respect of any loss resulting from such termination of this Agreement); or
  - (b) the right of Housing under this Clause to terminate this Agreement; or
  - (c) the amount or value of any such gift, consideration or commission.
- 22.4 The provisions of this clause 22 shall survive the termination of this Agreement for any reason.

## 23. Publicity

The Trade Contractor agrees that, it will not issue any press release or other public document containing or making any public statement containing any information which relates to, or is connected with, or arises out of, this Agreement or the matters contained in it, or its appointment by Housing without the prior written consent of Housing.

## 24. Certificate and Records

The Trade Contractor shall keep and make available for inspection to Housing and its auditors upon reasonable notice being given all books and records, as are necessary for verification of payments and the performance of the Trade Contract Works.

## 25. Negotiation, Mediation and Arbitration

- 25.1 If any dispute arises out of this Agreement the parties will attempt to settle it by negotiation.
- 25.2 If the parties are unable to settle any dispute by negotiation, the parties may if they both so agree, attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

25.3 If the parties have not settled the dispute by mediation, either by a failure to agree to refer the matter to mediation, or within 21 days from the initiation of the mediation, any claim or matter arising under or in connection with this Agreement may be referred to and each party irrevocably agrees to submit to the exclusive jurisdiction of the Royal Court of Guernsey.

25.4 The Law of Guernsey governs this Agreement.

## 26. Assignment

26.1 The Trade Contractor shall not assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of Housing.

26.2 Any consent by Housing to permit the Trade Contractor to subcontract any of the Trade Contract Works shall be granted on the basis that the Trade Contractor shall remain at all times fully liable for the acts or omissions of the sub-contractor.

26.3 Housing shall be entitled to assign, the benefit and/or burden of this Agreement to any successor organisation that shall take over the functions of Housing.

## 27. Force majeure

27.1 Neither party shall be in breach of this Agreement if it is prevented from performing its obligations by reason of an event of force majeure.

27.2 An event of force majeure shall mean any cause preventing either party from performing all or any of its obligations arising from or attributable to war, civil war, riot, malicious damage, failure of essential utility services, fire, flood, storm governmental order or industrial dispute.

27.3 If either party is unable to perform its duties and obligations under this Agreement as a direct result of an event of force majeure it shall give written notice to the other of that inability and supply full details of the event and

(a) The operation of this Agreement shall be suspended for as long as the event shall continue, and

(b) upon the cessation of the event the party relying upon it shall notify the other.

27.4 If the event continues for a period of more than 30 days the party not claiming relief shall have the right to terminate this Agreement upon giving 7 days written notice of termination to the other party.

## 28. Illegality

If any provision or term of this Agreement becomes or is declared void, illegal, invalid or unenforceable for any reason whatsoever including (without limitation) by reason of

- (a) the provisions of any legislation or provision having the force of law or
- (b) any decision of any Court or other body or authority having jurisdiction over the parties or this Agreement,

that term or provision shall be divisible from, and deemed to be deleted from, this Agreement provided that, if effect of the deletion is to materially affect or alter the commercial basis of this Agreement, the parties shall negotiate in good faith any amendment or modification of the terms of this Agreement as may be necessary or desirable to give effect to the original intention of the parties.

## 29. Miscellaneous

29.1 This Agreement embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of this Agreement.

- (a) Subject to paragraph (b) below) neither party shall be entitled to rely on any agreement, understanding or arrangement which is not expressly set forth in this Agreement;
- (b) The Trade Contractor warrants to Housing that the information supplied as part of its Tender was at the time that it was submitted, and is at the date of entering into this Agreement, true and accurate in all respects.

29.2 This Agreement shall not be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the parties.

29.3 No failure to delay on the part of either party hereto to exercise any right or remedy under this Agreement shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

29.4 Each of the parties hereto shall be responsible for its respective legal and other costs incurred in relation to the preparation of this Agreement.

29.5 No term of this Agreement shall be enforceable by a third party being any person other than a party to this Agreement and their permitted successors and assignees.



### 30. Notice

30.1 Any notice or other document to be given under this Agreement shall be in writing and shall be served if delivered personally or sent by:

- (a) pre-paid post; or
- (b) facsimile

to a party at the address or such other address as the party may from time to time designate and in the case of Housing addressed for the attention of the Property Manager.

30.2 Any notice or other document shall be treated as having been received

- (a) two Business Days following the date of posting or,
- (b) if served personally or given by facsimile, simultaneously with the delivery or transmission provided it is delivered or transmitted before 5.00pm but if after that time, then on the next Business Day.

To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.

30.3 Service may not be effected by email

### 31. No Partnership/Agency

Nothing in this Agreement is intended to, or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise the Trade Contractor to act as agent for Housing, and neither party shall have authority to act in the name of, or on behalf of, or otherwise bind the other, in any way, including but not limited to, the making of any representation or warranty; or the assumption of any obligation or liability, and the exercise of any right or power.

## **THE SCHEDULE**

### **Part 1**

#### **Applicable Regulations**

The following is not an exhaustive list. The Trade Contractor is expected to be aware of and abide by any applicable laws and regulations to the Works/ Services being provided and any amendments or re-enactments to any regulations or codes or requirements.

#### **1. Health and Safety at Work**

1.1 The Trade Contractor will be expected to comply with all current Health & Safety Regulations and Laws. The Health & Safety at Work (General) (Guernsey) Ordinance (1987) and the Health and Safety at Work etc. (Guernsey) Law 1979. These require the following enactments to be regarded as relevant statutory provisions:

- The Explosives (Guernsey) Law, 1905
- The Explosives (Guernsey) (Amendment) Law, 1914
- The Law entitled “The Explosives (Guernsey) (Amendment) Law, 1951”, registered on the 17<sup>th</sup> February 1951
- The Law entitled “Loi relative aux Huiles ou Essences Minérales ou autres substances de la même nature, 1924”, registered on the 5<sup>th</sup> April 1925. (Petroleum Law)
- The Law entitled “Loi supplémentaire a la Loi relative aux Huiles ou Essences Minérales ou autres substances de la même nature (1927)”, registered on the 16<sup>th</sup> July 1927. (Petroleum Law)
- Part IV of the law entitled “Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes (1917)”
- The Law entitled “Loi ayant rapport à l’ Emploi de Femmes, de Jeunes Personnes et d’Enfants”, registered on the 20<sup>th</sup> November 1926
- The Law entitled “The Health, Safety and Welfare of Employees Law, 1950”, registered on the 22<sup>nd</sup> April, 1950
- The Poisonous Substances (Guernsey) Law 1994
- The Public Highways Ordinance, 1967
- The Safety of Pits Ordinance, 1973
- The Employers Liability (Compulsory Insurance) (Guernsey) Law, 1993
- The Health & Safety (Gas) (Guernsey) Ordinance, 2006, approved code of practice and guidance
- The approved code of Practice entitled “Management of Exposure to Asbestos in Workplace Buildings and structures.”

1.1.2 The Trade Contractor will also be expected to comply with relevant UK legislation. A failure to comply with an employer’s duties would breach The Health & Safety at Work (General) (Guernsey) Ordinance (1987). Relevant regulations include (but not limited to):

- Management of Health and Safety at Work Regulations 1999
  - Control of Substances Hazardous to Health Regulations 2002
  - Work at Height Regulations 2005
  - Provision and Use of Work Equipment Regulations 1998
  - Pressure Systems Safety Regulations 2000
  - Lifting Operations and Lifting Equipment Regulations 1998
  - Manual Handling Operations Regulations 1992
- 1.2 Trade Contractors must adhere to the guidance contained in the code of practice entitled the 'Organisation and Management of Health & Safety in Construction'. This Approved Code of Practice is available from the Health & Safety Executive, Committee for Employment & Social Security.
2. Laws & Building Regulations
- 2.1 All Trade Contractors must comply with the latest Laws and Regulations.
- 2.2 All Trade Contractors undertaking building works, or building-related services must comply with The Land Planning and Development (Guernsey) Law, 2005 and The Building (Guernsey) Regulations, 2012, and any subsequent revisions.
3. Pesticides
- 3.1 The importation, storage, sale and use of professional pesticides are controlled by - "The Control of Poisonous Substances Regulations, 1995", and as inferred by the title of the regulations, cover chemicals perhaps not regarded as a pesticide.
- 3.2 The regulations apply to any professional pesticide, substance, preparation or organism prepared or used for any of the following processes:
- Protecting plants or wood or other plant products from harmful organisms
  - Regulating the growth of plants
  - Giving protection against harmful creatures
  - Rendering such creatures harmless
  - Controlling organisms with harmful or unwanted effects on water systems, buildings or other structures, or on manufactured products
  - Protecting animals against ectoparasites, e.g. ticks, lice, mites & insects
- 3.3 The regulations state that all persons who have contact with poisonous substances must be competent to deal with them in a safe manner and hold a relevant certificate of competency. Only people with a current National Proficiency Test Council Certificate of Competence can purchase professional pesticides/ chemicals, and the certificate and/or identity card must be shown at the time of purchase.

- 3.4 Certain controlled substances require a Licence. Applications forms for a licence can be obtained from the Health & Safety Executive offices.

#### 4. Scaffolding

- 4.1 All scaffold erected in Guernsey must comply with the relevant British Standard. In addition, scaffolds erected on or over the public highway require a licence to be granted by the Executive under the terms of The Public Highways Ordinance, 1967. The permission of the relevant parish constable is also necessary.
- 4.2 Licences granted under the terms of the ordinance will often require specific safety features to ensure that the general public are not put at risk from their erection or the intended use of the scaffold.
- 4.3 The duty implied by the licence is such that the scaffolding contractor and the hire / user must ensure the safety of the public by whatever means is appropriate. Application must therefore be made in advance of the date of anticipated building of the scaffold. Whilst the ordinance predominantly covers scaffolds, other structures such as hoardings, suspended rails, cable wires etc., also require permission.
- 4.4 Applications forms for a licence can be obtained from the Health & Safety Executive offices.
- 4.5 All Trade Contractors will ensure that:
- A current certificate of completion of the Managing Safety in Scaffolding qualification is held by anyone engaged to manage scaffolding operations.
  - A current certificate of STAR (Scaffold Training and Registration Scheme) or equivalent training for all of the operatives (Scaffolder Level 1) engaged in scaffolding operations.
  - For advanced or complicated scaffold structures, the contractor has advanced level trained operatives engaged on the installation. (Advanced Scaffolder).

#### 5. Site-Specific Obligations

The Trade Contractor will be expected to abide by any site-specific obligations as detailed on the Order or Invitation to Tender or Trade Contract Documents, or otherwise informed.

## 6. Criminal Screening Policy

- 6.1 As a public body / service provider and an employer, the States of Guernsey has a responsibility to ensure the safety of persons occupying, working, or requiring to be in its properties. There are some locations such as residential homes or occupied properties where persons undertaking maintenance work may be required to have undergone a criminal screening process.
- 6.2 This section gives general guidance on appropriate arrangements for the criminal screening of persons that will be working on Housing's premises.
- 6.3 The Rehabilitation of Offenders (Bailiwick of Guernsey) Law 2002 gives a definitive list of the type of areas of work for which a police check is justified. The key areas are:
- Where the person will potentially have access to sensitive information
  - Where the person will enter the homes/property of members of the public
  - Any position where the normal duties include work in –
    - a school which is exclusively or mainly for the education of children;
    - a hospital or nursing home which is exclusively or mainly for children
    - an institution which is exclusively or mainly for the care or detention of children
- disregarding any work which is done on a part of the premises in which children are not looked after, or at times when children are not present
- Where the work is carried out wholly or partly within the precincts of the prison
- 6.4 There may be other areas falling outside the above definitions for which a police check may be justified.
- 6.5 The Trade Contractor will be responsible for ensuring that the criminal screening process is carried out on any employees **that will be working at residential homes or occupied properties**. As this process can take a few weeks, it is advisable that this process is undertaken prior to works being ordered.
- 6.6 The Trade Contractor must obtain at its own responsibility and expense (current charge of £10 per individual police check), all police checks necessary for the carrying out of works under this contract at the relevant sites or as otherwise advised.
- 6.7 The police checks must only be carried out on persons who shall be working in the relevant locations as part of the Contract. They should not be carried out

in circumstances where the Trade Contractor simply wishes to find out more about a particular employee or prospective employee and where they are not required to work at the specified locations.

- 6.8 Only information of convictions/ offences, or in certain cases, intelligence relevant to the areas of work should be taken into account, e.g. a conviction for fraud would not necessarily preclude someone working at an occupied property. In addition, consideration must be given to the length of time since the offence occurred, employees previous performance at work etc.
- 6.9 All information relating to the criminal convictions of individuals obtained as part of this process must be treated as highly confidential. The Trade Contractor will be able to view the information only if permission by the individual is given. Similarly, no information could be passed to Housing without the permission of the individual.

## **Part 2**

### **Objectives / Performance**

1. Overview
  - 1.1 The Property Management Section, Housing maintains a list of preferred Trade Contractors who continue to provide the works required to maintain Housing's own property portfolio to an appropriate standard.
  - 1.2 The Property Management Section, manages the delivery of the following categories of work:
    - Air conditioning and ventilation suppliers & associated maintenance
    - Boiler service and maintenance
    - Carpentry
    - Ceramic Tiling
    - Carpet & other flooring fitting
    - Commercial Kitchen Equipment Supplies & Maintenance
    - Electrical engineering
    - General building
    - General labour services
    - Grounds Maintenance and Clearance
    - Landscape gardening
    - Maintainers of building management systems
    - Painting & decorating
    - Pest control
    - Plastering
    - Plumbing and heating engineers
    - Pressure cleaning
    - Roofing (pitched and/or flat roofs)

- Stonemasons
  - Tree surgeons
  - Welders
  - Window and door installers/ manufacturers
  - Window servicing and maintenance
- 1.3 All of the above work packages are managed centrally by the Property Management Section in order to ensure and support
- Good standard of work
  - Value for money
  - Tenant satisfaction
  - Consistency
  - Consolidation of knowledge management

## 2. Tender and Contract Objectives

- 2.1 The Property Management Section of Housing has defined objectives in regard to the overall service provision. Accordingly, Trade Contractors contribute to the achievement of Housing's objectives.
- 2.2 The objectives are summarised as follows:

### *Service Quality*

- (i) Housing wishes to be assured that successful Trade Contractors have a strong and thorough approach to quality management embedded in the delivery of the services/works
- (ii) Housing requires service provision to be flexible, and scaleable both in scope and quantity, in order to ensure that changes in demand can be rapidly accommodated.

### *Cost*

- (i) Housing's objective is to maintain its' property portfolio at a cost which offers value for money whilst at the same time ensuring that quality is maintained
- (ii) An equally important objective for Housing is to pay for the services in the most appropriate way.

### *Commercial*

The Framework Agreement and conditions specifying the legal and commercial principles on which the States of Guernsey is prepared to do business. Proposed variations to the terms and conditions may be included as part of the

tender response, but the States of Guernsey, at its sole discretion may or may not agree to the request.

### *Staff*

It is the States of Guernsey's expectation that all staff who will be employed in the provision of the services for this contract shall be properly qualified to carry out the Services and shall be up-to-date with relevant health and safety courses and legislation applicable to their trade(s).

- 2.3 Trade Contractors are expected to consider the Objectives of this Agreement when implementing works for Housing.

## 3. Managing the Account

- 3.1 The Trade Contractor must provide a key person (the Account Manager) who will assume all account management responsibilities, including:

- Scheduling of works /services
- Allocating persons to complete the works/services
- Providing quotes for works when requested
- Ensuring that any special requirements for the Site are met
- Preparing and sending the management reports as required
- Being the central contact for queries or problems
- Resolving of issues

- 3.2 The nature of work conducted, or persons occupying some sites, may require Trade Contractor staff accessing the site to have undergone police clearance. For further information on Police Check requirements, please refer to paragraph 6 in part one of this Schedule. In these circumstances, the Account Manager must ensure that the persons allocated to complete the work have undergone any police check at the level required and the results of such police check are satisfactory.

- 3.3 The Account Manager will be responsible for providing management information both on Trade Contractor and if appropriate, sub-contractors' performance as requested. The purpose of providing such information shall be to provide a basis upon which performance can be monitored and to provide information that will assist Housing in the management of the contract and services and to provide a basis for budget management.

- 3.4 It is anticipated that reports required will include:

Works report	Works completed, including site, job type, job number, cost of work, variance against estimated cost, issues Works scheduled
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Performance report	Any issues regarding quality or performance
Subcontractors report	Any issues regarding quality or performance of sub-contractors

3.5 See section 10 Health & Safety above.

#### 4. Scheduling the Works/ Services

4.1 A Job Form (an Order) will be prepared by Housing for each request for work to be completed (examples of Job Forms are provided in Appendix A)

4.2 The Job Form will detail:

- Job number – which must be quoted on all correspondence and invoices
- Name and address of site/property
- Any security or access issues and
- Full specification/details of the works to be completed
- The response type and required timescale for completion of the work
- Additional notes/ instructions if appropriate

4.2 Dependant of the works/ services required, the Job Form may include a performance specification, detailing the outputs to be met by the works/ services.

4.3 Housing will send the Job Form to the Trade Contractor who must notify Housing if the timescale cannot be met and propose the date/ time the work could be started and/or completed.

4.4 Housing will take one of the following actions:

- Accept the stated date & time of works and authorise the Trade Contractor to complete the work
- Amend the specification of
- Present the Job Form to another Trade Contractor for completion
- Cancel or postpone the job

#### 5. Response Times Required

5.1 Depending on the urgency of the requirement, Housing will assign a timescale for the completion of the Services/Works.

5.2 Trade Contractors carrying out responsive repairs/works are expected to have the flexibility and capacity to respond to all required timeframes

5.3 The table below gives a definition of how the response times are classified.

Priority Classification	Response & Rectification Time
Priority 1: Emergency work – very urgent	Attend within 1 hour. Make safe as soon as possible.
Priority 2: Urgent work	Attend within 1 Day
Priority 3:	3 Days
Priority 4:	7 Days
Priority 5:	14 Days
Priority 6:	30 Days
Priority 7:	30 - 60 Days
Priority 8:	60 Days
Priority 9:	90 Days
Priority C:	As Per Contract/Tender

## 6. Conducting the Works/Services

- 6.1 Trade Contractor staff will be punctual, courteous and respect the needs of the tenants/residents of the Site. The Trade Contractor will ensure minimal disruption to the residents or location.
- 6.2 The Trade Contractor will be expected to provide all tools, equipment, machinery, consumables and vehicles required to complete the works and to hold all required insurances and other necessary permits, licences or permissions for their use by the persons that shall undertake the Work.
- 6.3 Housing will hold or obtain any planning consents required to undertake the works or services. The Trade Contractor shall be expected to obtain all additional permits licenses or other permissions as may be required to undertake the works or service.
- 6.4 The Trade Contractor must obtain written approval from Housing, of plans and designs for the work, prior to the purchase of any items or implementation of works/services. In addition, any subsequent amendments to the design, plan or specification after this consent, must each be approved by Housing prior to further progress.
- 6.5 The Trade Contractor must inform Housing of any current or developing issues that may affect the integrity, safety, function or performance of any sites, properties, grounds, maintenance works, sub- or related work, materials, equipment or appliances.
- 6.6 Site users (including the public) must be notified of any activity that could pose a potential hazard to their health or safety and appropriate warning signage is to be used in the vicinity of such works.

- 6.7 The Trade Contractor is to remove and dispose of waste on the same day that the waste is created. Waste disposal is to be in accordance with environmental legislation. All areas of the site affected by the works, including the access areas are to be left in a tidy state and are to be safe to use/ access.
- 6.8 Should the job form specify that purchasing of items is required, the Trade Contractor is to strictly adhere to the specification and if given, stated price ceiling given for the purchase. The job form may specify all elements of the purchase, including make, model, type and/or supplier of items to be purchased.
- 6.9 The Trade Contractor agrees to submit appropriate invoices in a timely manner following completion of the works.

## **Part 1 GENERIC STANDARD DP/GDPR (BAILIWICK OF GUERNSEY) CLAUSES**

*The footnotes to this document do not form part of this Agreement and are provided for information only. They do not constitute legal advice and should not be relied on. The Contractor should satisfy itself in respect of any matters of Guernsey law from its legal advisors / the relevant legislation and / or any directions, codes, guidance or other applicable publications of the Guernsey Data Protection Authority<sup>3</sup>.*

### **STANDARD DEFINITIONS**

**Party:** a Party to this Agreement;

**Agreement:** the Framework Agreement between the Contractor and the States of Guernsey;

**Law:** means any law, ordinance, subordinate legislation within the meaning of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

**Contractor Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

**Services:** means the services the subject of the Framework Agreement;

### **GDPR (BAILIWICK OF GUERNSEY) CLAUSE DEFINITIONS**

**Authority, Controller, Data Protection Officer, Data Subject, Personal Data, Personal Data Breach, Processor, Unauthorised Jurisdiction** take the respective meaning given in the DP (GDPR) Law.

**Data Protection Legislation:** the DP (GDPR) Law, the DP (CAT) Ordinance, the DP (LED) Ordinance, the DP Regulations and all applicable Law about the processing of personal data and privacy.

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Loss Event:** any Personal Data Breach and / or any other event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and / or actual or potential loss and / or destruction of Personal Data in breach of this Agreement.

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DP (CAT) Ordinance:** Data Protection (Commencement, Amendment and Transitional) Ordinance, 2018.

**DP (GDPR) Law:** Data Protection (Bailiwick of Guernsey) Law, 2017.

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<sup>3</sup> <https://odpc.gg/new-law/> (as at 20.06.2018)

**DP (LED) Ordinance:** Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance, 2018.

**DP Regulations:** Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018.

**Protective / Security Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Sub-processor:** any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

Any words following the terms 'including', 'include', in particular, 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 1. DATA PROTECTION

### **Additional information regarding Section 20. Data Protection in this Framework Agreement.**

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the original agreement by the Customer and may not be determined by the Contractor.<sup>4</sup>
- 1.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation or any other Law.<sup>5</sup>
- 1.3 The Contractor shall provide all reasonable assistance<sup>6</sup> to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
  - (a) a systematic description of the envisaged processing operations and the purpose and / or objectives of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms and other significant interests of Data Subjects; and

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<sup>4</sup> Section 35(1)(a) of the DP (GDPR) Law, corresponding to Article 28(3)(a) of the GDPR

<sup>5</sup> Section 35(2) of the DP (GDPR) Law, corresponding to Article 28(3) of the GDPR.

<sup>6</sup> Section 35(1)(f) of the DP (GDPR) Law, corresponding to Article 28(3)(f) of the GDPR

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.<sup>7</sup>

1.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with the original agreement, unless the Contractor is required to do otherwise by Law. If it is so required  
the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;<sup>8</sup>
- (b) ensure that it has in place Protective / Security Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of all relevant matters (including those measures in section 41(3) of the DP (GDPR) Law), and including the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;<sup>9</sup>
- (c) ensure that:
  - (i) the Contractor Personnel do not process Personal Data except in accordance with the original agreement;
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Contractor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;<sup>10</sup>
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

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<sup>7</sup> Section 44(2) of the DP (GDPR) Law, corresponding to Article 35(7) of the GDPR.

<sup>8</sup> Section 35(1)(b) of the DP (GDPR) Law, corresponding to Article 28(3)(a) of the GDPR

<sup>9</sup> Section 41(3) of the DP (GDPR) Law, corresponding to Article 32(1) of the GDPR

<sup>10</sup> Section 35(1)(c) of the DP (GDPR) Law, corresponding to Article 28(3)(b) of the GDPR.

- (d) not transfer Personal Data to an Unauthorised Jurisdiction unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with section 56 of the DP (GDPR) Law or section 44(1) of the DP(LED) Ordinance) as determined by the Customer;<sup>11</sup>
  - (ii) the Data Subject has enforceable rights and effective legal remedies;<sup>12</sup>
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.<sup>13</sup>

1.5 Subject to clause [1.6], the Contractor shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;<sup>14</sup>
- (d) receives any communication from the Authority or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;<sup>15</sup> or
- (f) becomes aware of a Data Loss Event.<sup>16</sup>

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<sup>11</sup> Section 35(1)(c) of the DP (GDPR) Law, corresponding to Article 28(3)(b) of the GDPR.

<sup>12</sup> Section 56(1)(b) of the DP (GDPR) Law, corresponding to Article 46(1) of the GDPR.

<sup>13</sup> Section 35(1)(d) of the DP (GDPR) Law, corresponding to Article 28(3)(g) of the GDPR.

<sup>14</sup> Section 35(1)(e) of the DP (GDPR) Law, corresponding to Article 28(3)(e) of the GDPR.

<sup>15</sup> Section 35(1)(e) of the DP (GDPR) Law, corresponding to Article 28(3)(a) of the GDPR

<sup>16</sup> Section 42(1) of the DP (GDPR) Law, corresponding to Article 33(2) of the GDPR

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- 1.6 The Contractor's obligation to notify under clause [1.5] shall include the provision of further information to the Customer in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause [1.5] (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Customer following any Data Loss Event;
  - (e) assistance as requested by the Customer with respect to any request from the Authority, or any consultation by the Customer with the Authority.
- 1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause and the Data Protection Legislation.<sup>17</sup>
- 1.9 The Contractor shall allow for audits of its Data Processing activity (including that of any Sub-Processor) by the Customer or the Customer's designated auditor promptly following any request of the Customer.<sup>18</sup>
- 1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.<sup>19</sup>
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Customer;<sup>20</sup>

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<sup>17</sup> Sections 35(1)(g) and 37(1) of the DP (GDPR) Law, corresponding to Articles 28(3)(h) and 30(1) of the GDPR

<sup>18</sup> Section 35(1)(g) of the DP (GDPR) Law, corresponding to Article 28(3)(h) of the GDPR

<sup>19</sup> Section 47 of the DP (GDPR) Law, corresponding to Article 37 of the GDPR.

<sup>20</sup> Section 36(1) and (2) of the DP (GDPR) Law, corresponding to Article 28(2) of the GDPR



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- (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause [1] such that they apply to the Sub-processor<sup>21</sup>; and
  - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.<sup>22</sup>
- 1.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme.
- 1.14 The Parties agree to take account of any guidance issued by the Authority. The Customer may on not less than 30 Working Days' notice to the Contractor amend this Agreement to the extent that the Customer considers it necessary in order to ensure that it complies with any guidance issued by the Authority.

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<sup>21</sup> Section 36(3) of the DP (GDPR) Law, corresponding to Article 28(4) of the GDPR

<sup>22</sup> Section 36(4) of the DP Law, corresponding to Article 28(4) of the GDPR

**Part 2 SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS****Schedule of Processing, Personal Data and Data Subjects**

1. The Contractor shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>Tenant and/ or member(s) of the household contact details.</i>
Duration of the processing	<i>Contact details retained for the duration of the works</i>
Nature, scope, context and purposes of the processing	<p><i>Contact details required to organise appointments and repairs to a property occupied by the data subject.</i></p> <p><i>These details will be shared with any contractor or member of staff involved in completing the repair. This is provided electronically and/ or via a printed job order.</i></p> <p><i>These details should be destroyed once the repair has been completed and copies of the personal data should not be made, further retained or further processed.</i></p>
Category of Personal Data	<i>Name, address, home/ work/ mobile telephone numbers, pay, images, biometric data etc.</i>
Categories of Data Subject	<i>Tenants/ clients requiring our services.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>Tenant's personal data must be destroyed after works have been completed</i>

Signed for and on behalf of  
The States of Guernsey acting by and  
through Housing

.....  Authorised Signatory
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Signed for and on behalf of the Trade  
Contractor; *by signing, you confirm  
that you have read and agree to the  
Framework Agreement (43 pages)*

.....  Authorised Signatory
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Please supply the name of:

The Person maintaining the Register  
of operatives engaged on the Trade  
Contract Works (Clause 9.3) if  
different from authorised signatory

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the Account Manager (Schedule: Part  
2 Clause 3.1) if different from  
authorised signatory

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