

Dated []

(1) Tai Tarian Ltd.

(2) [Insert Name of Provider]

FRAMEWORK AGREEMENT

Kitchen and Bathroom Upgrade Works Framework Agreement – Ref
01009

This Agreement dated [Insert Date Here]

BETWEEN:

- (1) **Tai Tarian Limited** of Ty Gwyn, Brunel Way, Baglan Energy Park, Neath, SA11 2FP (Company No. IP031041) ("**the Employer**"); and
- (2) [Insert Company Here] (Company No. [Insert No. Here]) ("**the Provider**").

RECITALS:

The Employer advertised on Sell2Wales on [insert post-tender] in respect of its intention to invite tenders for Providers to enter into framework agreements in connection with Kitchen and Bathroom Upgrade Works to various properties in the Neath Port Talbot area, or surrounding area.

The Provider submitted a tender dated [Insert post-tender] for appointment under a framework agreement. On [insert post-tender] the Employer notified the Provider that it had been successful in being awarded a framework agreement; and

This Agreement sets out the terms on which the Employer may engage the Provider to carry out Kitchen and Bathroom Upgrade Works by entering into Contracts (see clause 1 below for definitions). The conditions of this Agreement shall apply to all Employer Orders issued to the Provider.

In Consideration of the sum of one pound (£1.00), receipt of which the Provider hereby acknowledges, It is agreed as follows:-

1. INTERPRETATION AND DEFINITIONS

1.1 The following definitions are used in this Agreement:

"Call Off Process"	the call off mechanism as set out in Clause 2 and Schedule 2;
"Commencement Date"	means [Insert post-tender] ;
"Contract"	a contract for Services entered into (or, as applicable, to be entered into) between the Employer and the Provider, following the Provider's selection for the contract in accordance with this Agreement, being on the terms (subject to changes established through the Call Off Process) of NHF Form of Contract 2023 as set out at Schedule 5 of

	the Agreement and the Employer Order issued for the Services;
“Employer Order” or “Order”	Means the call-off contract by the Employer from a client representative to the Provider, subsequent acceptance of the order by the Provider and issue of verbal or written receipt, or by starting the work, signifies that the Contract has been entered into under the Call Off Process;
"Framework Providers"	The Primary Provider and the other Reserve Providers on this framework who have entered into framework agreements similar to this Agreement for Contracts;
"Framework Term"	the term of this Agreement up to expiry or early termination as referred to in clause 8;
“Key Performance Indicators”	The Key Performance Indicators as set out in the KPI Framework
“ITT”	the Invitation to Tender as set out in Schedule 1 within which Contract(s) may be called off under this Agreement as set out in Schedule 1;
“Schedule of Rates” or “Price Framework”	the schedule of rates submitted by the Provider as part of their selection for this framework, as set out at Schedule 4;
“Services”	Means the works as set out in the ITT and Employer Order.

- 1.2 Words in the singular include the plural and vice versa and a reference to a gender shall include a reference to all genders and a reference to a person shall include a reference to a firm, body corporate and unincorporated association.
- 1.3 The headings in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement.
- 1.4 Reference to a "Schedule" in this agreement refers to a Schedule to this Agreement unless indicated to the contrary.
- 1.5 Any reference to "including" shall be interpreted as if the words "without limitation" were stated after it.

2. EMPLOYER'S OBJECTIVES

2.1 The Employer and the Provider agree to work together in accordance with the terms of this Agreement to achieve the successful delivery of the Services and in particular, agree:-

2.1.1 to work together in good faith and in a spirit of mutual trust and respect;

2.1.2 to act in a co-operative and collaborative manner;

2.1.3 to share information honestly and openly;

2.1.4 to highlight any difficulties at the earliest possible opportunity;

2.1.5 to reviews of performance under Contracts;

2.1.6 to seek continuous improvement in the performance of Contracts; and;

2.1.7 to share information, attending meetings and reporting as reasonably required by the Employer to facilitate the above.

2.2 The Provider and the Employer acknowledge and agree that this Agreement shall not constitute, create or otherwise give effect to a joint venture, pooling arrangement or partnership or similar arrangement between any of them.

2.3 The Employer may select the Provider to enter into a Contract for services within the scope of this Agreement by the application of the Call off Process as set out in Schedule 2.

3. AFFECT OF THIS AGREEMENT ON CONTRACTS

3.1 No undertaking or representation is given (under this Agreement or otherwise) by the Employer as to the extent (if at all) that the Provider will be awarded Contracts (or otherwise given an opportunity to compete for Contracts).

3.2 While the Employer's intention is to use Framework Providers for Contracts, nothing in this Agreement or elsewhere shall prevent the Employer from awarding contracts for services outside this Agreement (whether to a Framework Provider or any other Provider) and the Provider shall not have any claim against the Employer in respect of any failure to use this Agreement.

- 3.3 If a Contract is terminated before completion of the whole of the services to which it relates, the Employer may award the balance of services outside this Agreement (whether to a Framework Provider or any other Provider).
- 3.4 Nothing in this Agreement (or action taken under it) shall:-
- 3.4.1 give rise to any presumption or implication or otherwise have a bearing on whether or not a Contract has at any time been entered into;
 - 3.4.2 affect the obligations under any Contract (unless and to the extent required by the terms of the Contract); or
 - 3.4.3 be taken into account in relation to the interpretation of any Contract (unless and to the extent required by the terms of the Contract).
- 3.5 A legal commitment to take or pay for services shall only arise when a Contract for the relevant services has been entered into and completed following execution by the Provider and the Employer.

4. PAYMENT UNDER THIS AGREEMENT

- 4.1 The Provider shall not be paid any sums under this Agreement in respect of any costs incurred or services or work done or to be done under, prior to, or in connection with this Agreement. The Provider's entitlement to payment shall be limited to its right to payment under any Contract.
- 4.2 If the Employer abandons an intention to award a Contract at any time, the Provider shall not have any claim for costs incurred in responding to an Employer Order or otherwise in connection with anything done in anticipation of a Contract.

5. PROVIDER'S COMMITMENT

- 5.1 The Provider agrees with the Employer to accept Employer Orders (unless it does not have the resources for the relevant Contract at the relevant time) and to respond to Employer Orders in good faith and in an open, co-operative and collaborative manner.
- 5.2 The Provider agrees with the Employer to share information openly and to highlight any difficulties at the earliest practicable time.
- 5.3 By entering into this Agreement the Provider commits to collaborating in the running of this framework by participating in:-
- 5.3.1 reviews of performance under Contracts and the operation of the Framework;

- 5.3.2 seeking continuous improvement in the performance of Contracts; and
 - 5.3.3 information sharing, attending meetings and reporting as reasonably required by the Employer to facilitate the above.
- 5.4 The Provider agrees to develop a specific plan for Contracts it undertakes with the objective of improving social inclusion and the recruitment of the long term economically inactive (a "Community Benefits Plan"). The Provider's current plan is attached at Schedule 3 and the Provider agrees to implement that plan in relation to Contracts it undertakes. The Provider agrees to keep the Community Benefits Plan under review and to develop the Community Benefits Plan to address specific opportunities arising from specific Contracts and to modify the Community Benefits Plan as appropriate, to better achieve the community benefits it seeks to achieve, in discussion with the Employer.
- 5.5 The Provider warrants that it has not and will not:
 - 5.5.1 offer or give to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this agreement or any Contract or for showing favour or disfavour to any person in relation to this agreement or any Contract; or
 - 5.5.2 enter into this agreement or any Contract if, in connection with this agreement or any Contract, commission has been paid or an agreement for the payment of commission has been made by it or on its behalf or to its knowledge.
- 5.6 The Provider warrants that it has not and will not, in entering into this agreement or in entering into any Contract:
 - 5.6.1 communicate to any person other than the Employer, or a person duly authorised by them, the amount or approximate amount of any tender or submission, or proposed tender or submission, leading to this agreement or a Contract except where the disclosure, in confidence, of the approximate amount of the tender or submission was necessary to obtain insurance premium quotations required for the preparation of the tender or submission; or
 - 5.6.2 enter into any agreement or arrangement with any person, or Ordered of any person, that they shall refrain from tendering or competing, that they shall withdraw any tender or submission once offered or that it or they will vary the amount of any tender or submission to be submitted.

6. PROVISION AND USE OF INFORMATION

6.1 The Provider agrees to provide to the Employer, full, accurate and up to date information:-

6.1.1 as reasonably required to substantiate, confirm or explain its responses to Employer Orders;

6.1.2 by way of update to the Employer (whether or not Ordered) in relation to information provided to the Employer as part of the Provider's tender to be included on this framework, which is out of date or otherwise changed;

6.1.3 by way of update to the Employer (whether or not Ordered) in relation to information previously provided to the Employer which is out of date or otherwise changed; and

6.1.4 as otherwise reasonably Ordered from time to time by the Employer for the purposes of this Agreement or any proposed Contract; including in relation to the Provider's:-

- (a) status, structure and management;
- (b) resource commitments and availability;
- (c) performance under Contracts; or
- (d) performance under this Agreement.

6.2 Subject to clauses 6.3 and 6.4, in respect of any intellectual property rights in any information or documents provided to the Employer by the Provider, the Provider grants an irrevocable and royalty free licence to the Employer to use adapt or reproduce such information for any purpose in connection with the operation of this Agreement.

6.3 The Provider shall not be liable for any use of any information provided pursuant to this Agreement for any purpose other than that for which it was originally prepared or provided, but the Provider shall indicate when providing information any incompleteness or inaccuracy or limitation in the information provided in relation to its possible use for the purposes contemplated by this Agreement.

6.4 The Provider and the Employer (each referred to here as a "**Relevant Party**") shall keep confidential (subject to any legal obligation to which either Relevant Party may be subject from time to time) all information of a confidential nature which the Relevant Party providing the information has labelled or otherwise clearly stated is to be treated as confidential and any information relating to the Employer or any Contract ("**Confidential**

Information"). The Employer shall not be in breach of this Agreement by reason of anything it does the purpose of which is to secure compliance with any statutory duty. This clause shall not prevent the disclosure of Confidential Information:-

- 6.4.1 by a Relevant Party to its professional advisors;
- 6.4.2 reasonably required by, or to, persons engaged in the performance of obligations under this Agreement or a Contract;
- 6.4.3 which the disclosing Relevant Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
- 6.4.4 which is required by any law or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 6.4.5 which is already lawfully in the possession of the receiving Relevant Party, prior to its disclosure by the disclosing Relevant Party, and which is not subject to an obligation of confidentiality;
- 6.4.6 to the Welsh Government or any other body controlled by the Welsh Government; or
- 6.4.7 for any audit or examination of the economy, efficiency and effectiveness with which any Employer has used its resources.

7. SUB-CONTRACTING

- 7.1 The Provider shall not sub-contract any performance required of the Provider under this Agreement, without the prior written consent of the Employer.

8. DURATION

- 8.1 This Agreement shall operate for a period of 6 months, until 31st March 2026, with an option to extend for a further 3 x 12-month periods, subject to early termination in accordance with clause 8.2.
- 8.2 This Agreement may be terminated early:-
 - 8.2.1 by the Employer at its sole discretion for any reason at any time upon 3 months' notice;
 - 8.2.2 by the Employer upon the insolvency of the Provider upon notice taking effect immediately;

- 8.2.3 by the Employer upon a breach by the Provider of clauses 5.5 or 5.6;
 - 8.2.4 by the Employer upon a change in control of the Provider (without the consent of the Employer) upon notice taking effect immediately;
 - 8.2.5 by the Employer upon any other breach by the Provider not being remedied within a reasonable time for remedy as stated in a notice of the breach being given to the Provider;
 - 8.2.6 by the Provider for good reason with the Employer's consent.
- 8.3 Termination of this Agreement (whether early or by expiry of the term) shall not affect:-
- 8.3.1 any liability in respect of any breach prior to termination;
 - 8.3.2 the continuation of any provision governing the effect of any performance prior to termination or any provision relevant to the on-going performance of any Contract and the continued operation of clause 1 (Interpretation and definitions), clause 9 (Assignment and third party rights); clause 10 (Disputes) and clause 11 (Notices and parties' representatives);
 - 8.3.3 any Contract entered into (which may continue to be performed after termination of this Agreement, as governed by the terms of the Contract).

9. ASSIGNMENT AND THIRD PARTY RIGHTS

- 9.1 The Provider shall not assign the benefit of this Agreement. The Employer may assign the benefit of this Agreement with the prior written consent of the Provider (not to be unreasonably withheld or delayed).
- 9.2 Nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999.

10. DISPUTES

- 10.1 The Employer and the Provider will endeavour to notify each other of any anticipated dispute under this Agreement so that it can be avoided by negotiation between them.
- 10.2 The Employer and the Provider will endeavour to resolve any dispute under this Agreement which does arise by direct negotiations in good faith between senior executives. Each of them will give serious consideration to any Order by the other to refer the dispute to mediation if it cannot be resolved by direct negotiation.

10.3 This Agreement shall be governed by the law of England and Wales as it applies in Wales. The parties to this Agreement hereby irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.

11. NOTICES, COMMUNICATIONS AND PARTIES' REPRESENTATIVES

11.1 Any notice or other communication to be given or made under this Agreement shall be in writing and;

11.1.1 for communications to the Employer, address to:

Tai Tarian Limited,
Ty Gwyn,
Baglan Energy Park,
Brunel Way,
Neath, SA11 2FP.

11.1.2 for communications to the Provider, address to:

[Insert Provider Address Here]

11.1.3 such other person or persons and address as the relevant party above may notify to the others from time to time for this purpose.

SIGNED BY
for and on behalf of Tai Tarian Limited

.....
(Signature of authorised signatory)

SIGNED BY
for and on behalf of [Insert Provider Name]

.....
(Signature of Director or authorised signatory)

SCHEDULE 1 – INVITATION TO TENDER

[TO BE INSERTED POST TENDER]

SCHEDULE 2 – CALL OFF PROCESS

THE SERVICES

Kitchen and Bathroom Upgrade Works Framework Agreement – Ref 001009 as set out in the ITT and associated Schedules.

ENGAGEMENT PROCEDURE

It is anticipated that a maximum of 2 Providers will be appointed as Providers, with one Provider appointed as Primary Provider and the second Provider appointed as Reserve Provider.

Primary Provider

Reserve Provider

CALL OFF PROCESS – DIRECT AWARD

It is anticipated (**but there is no obligation**) that Tai Tarian will issue call-off Orders through “direct-award” to the Primary Provider. This is at the discretion of Tai Tarian.

The appointed Primary Provider will be expected to programme the works, and the works will be expected to be carried out by the Completion Date set out in the Form of Contract. It is anticipated that further call-off contracts will be issued in a similar manner.

In the event that Tai Tarian decides to increase the property numbers during the life of the Framework, Tai Tarian reserves the right (at its absolute discretion) to award call-off Contracts to either, or both, Primary Provider and Reserve Provider.

Provider's appointed to the Framework Agreement must be aware that there is no guarantee of any work or set number of Call-off Contracts awarded.

In the event that the primary Provider has not completed its last Call-off Contract; or it does not (in the reasonable opinion of the Employer) have the capacity; or has not (in the reasonable

opinion of the Employer) evidenced quality performance from previous Call-off Contract; or it has been suspended in accordance with the Key Performance Indicators, the Call-off Contract that should have been awarded to that Provider will be offered to the Reserve Provider. This is at the discretion of Tai Tarian.

If the Employer decides to award a Contract through the Framework Agreement then, it will:

- a) identify the relevant Provider in accordance with the methodology detailed above;
- b) issue, the selected Provider with an Employer Order setting out the scope of the services and the requirements; and
- c) once confirmation has been received accepting the Employer Order, the Provider shall enter into a Contract incorporating the Order, the call-off terms and conditions and this Agreement confirming the Employers requirements and identifying the price payable for the Services in accordance with the Price Framework and the NHF Form of Contract 2023 as set out in Schedule 5.

CALL OFF PROCESS – MINI COMPETITION

If the Employer decides to award a Contract through the Framework Agreement then, where it is in relation to services that are within the scope of the Framework Agreement, but are not specifically listed within the Price Framework, or if the Employer would like to ensure value for money by aggregating packages of Orders (“Mini-Competition Works”), the Employer will:

- a) identify the Providers capable of performing the call-off contract for the Mini-Competition Works (Tai Tarian reserves the right to give consideration to all Providers, including the Reserve Provider under the Framework Agreement);
- b) Supplement and refine the Call-off Contract only to the extent permitted by and in accordance with the requirements of the Procurement Act 2023 and associated guidance.
- c) Invite all Providers to participate in the “Mini-Competition” and:
 - a. Invite them within a specified time limit to submit a tender in writing for each specific Contract to be awarded;
 - b. Set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and

- c. Keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
- d) Apply the original award criteria (as stated in the ITT), or at Tai Tarian's discretion amend the original award criteria to no greater than 70%, or no lower than 30% for Price, or no greater than 70%, or no lower than 30% for Quality, to the compliant tenders submitted by the Providers through the mini competition as the basis of its decision to award a Contract.
- e) Award the Contract by placing an Order with the successful Provider which states the requirements, the price payable for the services in accordance with submitted rates by the Provider and incorporates the call off contract terms.

The Provider agrees that all tenders submitted by the Provider in relation to a “mini-competition” held pursuant to this process shall remain open for acceptance for ninety days (or such other period specified in the invitation to tender issued by the Employer in accordance with this process).

Notwithstanding the fact that the Employer has followed the procedure set out in this process, the Employer shall be entitled at all times to decline to make an award for its requirements. Nothing in this Framework Agreement shall oblige the Employer to place an order for the services.

ACCEPTING AND DECLINING ORDERS

Following receipt of an Order, the Provider shall promptly and in any event within a reasonable time determined by the Employer acknowledge receipt of the Order and either:

- a) where the Provider does not have the resources or expertise for the relevant Contract in accordance with clause 5.1 of the Framework Agreement, notify the Employer that it declines to accept the Order; or
- b) notify the Employer that it accepts the Order by email or by commencing the Services requested.

If the Provider does not accept the Order within a reasonable time then the offer from the Employer to the Provider shall lapse and the Employer may offer that Order to the Reserve Provider in accordance with this process.

The Provider, in agreeing to accept an Order, shall enter into a Contract with the Employer for the provision of the services referred to in that Order. The Contract shall be formed by the issue of an Order by the Employer, under which this Call-off Process, this Agreement and the ITT will apply.

The Provider shall not use a rate over and above the relevant rate or rates in the Price Framework.

The submitted rates of the Price Framework will be fixed for the duration of the Framework.

For the avoidance of doubt, a Framework Provider will not be awarded a Contract if the Employer has a ground for termination in accordance with clause 8.2 or has served a notice in accordance with clause 8.2.

DURATION

The Contract shall take effect on acceptance of the Order and shall expire automatically on the date specified in the Order or the completion of the Services whichever is the later, unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.

PRICE PAYABLE AND PAYMENT

For each Contract awarded pursuant to this Agreement, the price payable for the Services shall be in accordance with the Price Framework and stated on the Employer Order. Payment shall be in accordance with the NHF Form of Contract 2023 as set out in Schedule 5.

SCHEDULE 3 – COMMUNITY BENEFITS PLAN

[TO BE INSERTED POST TENDER]

SCHEDULE 4 – PRICE FRAMEWORK

[TO BE INSERTED POST TENDER]

SCHEDULE 5 – FORM OF CONTRACT
[TO BE INSERTED POST TENDER]