



DATED 1st April 2019

(1) Gateway Housing Association

-AND-

(2) K&T Heating Services Limited

CALL-OFF CONTRACT RELATING TO THE SUPPLY OF

HEATING SERVICES

Lot 1A – Gas Service, Repair Maintenance and Installation – Direct Award

**For the provision of Heating Service, Repair Maintenance, Installation and
Associated Works.**

(OJEU Ref: 2015/S 225-409917)

THIS CALL-OFF CONTRACT is dated 1st April 2019

BETWEEN

- (1) Gateway Housing Association (company number IP10433R) of 409-413 Mile End Road, London, E3 4PB (the "**Client**"); and
- (2) K&T Heating Services Limited (company number 05158607) of St James House C/O Bpe Solicitors Llp, First Floor, St James Square, Cheltenham, Gloucestershire, United Kingdom, GL50 3PR (the "**Contractor**").

INTRODUCTION

- (A) PfH is a Contracting Authority (as defined in clause 3(1)(w) of the Public Contract Regulations 2006) and the members of PfH are entitled to call-off Goods and Services in accordance with the provisions of this Framework Agreement.
- (B) Pursuant to a services concession contract PfH has granted HouseMark Ltd, a company registered in England and Wales with company number 03822761, ("**HouseMark**") the exclusive right as concessionaire to operate and manage a purchasing consortium on behalf of PfH for the benefit of its members.
- (C) The Procurement Agent has been appointed by HouseMark as its sub-contractor to provide procurement services on behalf of PfH for the benefit of the members of PfH.
- (D) The Contractor submitted a tender on 11th February 2015 to provide Goods and Services to members of PfH under a framework agreement.
- (E) Following the Contractor's successful tender, the Contractor entered into the Framework Agreement under which the Client is entitled to call-off Goods and Services from the Contractor in accordance with the terms of the Framework Agreement.
- (F) The Client is a member of PfH (and therefore a Client as defined in the Framework Agreement), as such this Agreement is intended to establish a direct contractual relationship between (1) the Client and (2) the Contractor, under which the Contractor will supply Goods and Services to the Client in accordance with the Framework Agreement.

AGREEMENT

1 Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Commencement Date” means the date of this Agreement.

“Contract Price” means the price (inclusive of any applicable VAT), payable to the Contractor by the Client under this Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under this Agreement.

“Framework Agreement” means the PfH Framework Agreement for the provision of Heating Service, Repair Maintenance, Installation and Associated Works entered into on 3rd May 2016 between (1) PfH, (2) the Contractor and (3) the Procurement Agent, as attached at Schedule 2.

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Client.

“Goods” means any such goods as are to be supplied by the Contractor (or by the Contractor’s sub-contractor) under this Agreement.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which this Agreement is bound to comply.

“Party” means a party to this Agreement.

“PfH” means Procurement for Housing Limited, a company limited by guarantee in England and Wales (company number 07662661).

“Pricing Schedule” means Schedule 3 which contains details of the Contract Price.

“Procurement Agent” mean CEL Procurement Limited, a company registered in England and Wales under company number 07371389.

“Schedule” means a schedule attached to, and forming part of, this Agreement.

“**Services**” means any services to be supplied by the Contractor (or by the Contractor's sub-contractor) under this Agreement, the Framework Agreement or the Terms and Conditions.

“**Term**” shall have the meaning given to it in clause 2 of this Agreement.

“**Terms and Conditions**” means the call-off terms and conditions of contract, as attached at Schedule 1, as may be amended between parties in writing, any such amendments being as set out in Schedule 4.

“**VAT**” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

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

- (a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) Words importing the masculine include the feminine and the neuter;
- (c) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (g) Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2 Term

This Agreement shall take effect on **1st April 2019** and shall expire automatically on **31st March 2021**, with the option to extend for a further 12 months (2+1), in which the contract will then expire on **30th March 2022** unless it is otherwise terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated or unless extended in writing by the Client (the “**Term**”).

The approximate annual value of the call-off contract is £250,000.00 per annum.

3 Contractor's Status

At all times throughout the Term the Contractor shall be an independent Contractor and nothing in this Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Agreement.

4 Client's Obligations

4.1 Throughout the term:

4.1.1 the Client may at its absolute discretion and from time to time throughout the term order Goods or Services from the Contractor in accordance with clauses 4, 5 and 6 of the Framework Agreement and in accordance with the Terms and Conditions.

4.1.2 the Client shall pay any sums due to the Contractor in accordance with clause 7 of the Framework Agreement, in accordance with the Terms and Conditions, and by reference to the Contract Price.

4.1.3 the Client shall perform its obligations to the Contractor in accordance with the Terms and Conditions.

5 Contractor's Obligations

5.1 Throughout the term:

5.1.1 the Contractor acknowledges that the Client may at its absolute discretion and from time to time order Goods or Services from the Contractor in accordance with clauses 4, 5 and 6 of the Framework Agreement, and in accordance with the Terms and Conditions.

5.1.2 the Contractor shall perform its obligations to the Client in accordance with the Terms and Conditions.

6 Entire Agreement

This Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

7 Notices

7.1 Any notice or other communication which is to be given by either Party to the other shall be sent to the details outlined in clause 7.2 below.

7.2 For the purposes of clause 7.1 above, the address of each Party shall be:

(a) For the Client:

Gateway Housing Association
409-413 Mile End Road,
London
E3 4PB

(b) For the Contractor:

K&T Heating Services Limited
St James House C/O Bpe Solicitors Llp,
First Floor,
St James Square,
Cheltenham,
Gloucestershire,
United Kingdom,
GL50 3PR

7.3 Either Party may change its address for service by serving a notice in accordance with this clause.

8 Data Protection

The subject-matter, nature and purpose and the duration of Processing and the types of Personal Data and categories of Data Subject in relation to which Personal Data may be Processed under this Contract are set out in the table below:

	Personal Data of which the Client is Data Controller	Personal Data of which the Contractor is Data Controller
Data Processor:	Contractor	Client
Categories of Data Subject:	Residents and the Client's Staff	The Contractor's Staff.
Subject matter of Processing (including types of Personal Data that may be Processed):	Personal Data concerning: <ul style="list-style-type: none"> Residents including names, addresses and contact details, Property access requirements or special requirements 	Personal Data concerning contact details of Contractor's Staff.

	<p>due to vulnerabilities; and</p> <ul style="list-style-type: none"> • contact details of Client's Staff. 	
<p>Nature and purpose of Processing:</p>	<p>Processing:</p> <ul style="list-style-type: none"> • Residents' Personal Data for the purposes of carrying out the supply of Goods and Services, including arranging appointments and access, ensuring the safety of both Residents and the Contractor's Staff carrying out the supply of Goods and Services, monitoring Resident satisfaction and correcting any Personal Data found to be incorrect whilst carrying out the supply of Goods and Services; and • Client's Staffs' contact details to enable the Parties to carry out their obligations under this Contract. 	<p>Disclosure of Personal Data concerning Contractor's Staff:</p> <ul style="list-style-type: none"> • to identify which Staff are undertaking the supply of Goods and Services and monitor and manage their performance of this Contract; and • to enable the Parties to carry out their obligations under this Contract.
<p>Duration of Processing:</p>	<p>During the Contract Period and for 20 (twenty) Working Days from its end (within which it is to be returned or destroyed).</p>	<p>During the Contract Period.</p>

9 Force Majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond

its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four (4) weeks the party not affected may terminate this agreement by giving seven (7) days' written notice to the affected party.

10 Governing Law

Each Party accepts the exclusive jurisdiction of the English courts and agrees that this Agreement is to be governed by and construed according to English law.

IN WITNESS of which this Agreement has been duly executed by the parties.

Signed for and on behalf of **Gateway Housing Association**

Signature: *L T Shea*
L T Shea (Mar 27, 2019).....

Name: **L T Shea**.....

Position: **Director of Finance and Resources**.....

Date: **Mar 27, 2019**.....

Signed for and on behalf of **K&T Heating Services Limited**

Signature: *Darren Miller*
Darren Miller (Mar 21, 2019).....

Name: **Darren Miller**.....

Position: **Director**.....

Date: **Mar 21, 2019**.....

SCHEDULE 1

TERMS AND CONDITIONS OF CONTRACT



SCHEDULE 2
FRAMEWORK AGREEMENT



SCHEDULE 3

PRICING SCHEDULE

Pricing will be as per the current PfH framework core price lists.

SCHEDULE 4

AMENDMENTS TO TERMS & CONDITIONS & FRAMEWORK AGREEMENT

K&T Heating Contract 2019-2021 - Gateway Housing Association

Final Audit Report

2019-03-27

Created:	2019-03-15
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