



Framework Agreement between

(1) Torbay Council

<i>and</i>

(2)

<i>In respect of</i>

Rock Face Stabilisation Works

<i>Dated</i>

1 September 2016

The Agreement

1.1 Details of Parties

This Agreement has been entered into on the date stated at the beginning of this agreement.

Between: <Supplier>	And: Torbay Council Town Hall Torquay Devon TQ1 3DR
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1.2 The Contract

Documents that form part of this Contract:

- 1.2.1 The Authority's Specification as detailed within 3 Specification and any associated Appendices
- 1.2.2 Variations to the Agreement that may be implemented over the life of the Agreement
- 1.2.3 Any other document as so mutually agreed by Torbay Council and <Supplier>

1.3 The Law and Signatures

This agreement shall be governed by and subject to English law.

Signed	Signed
<Supplier>	For and on behalf of Torbay Council
Name.....	Name.....
Position.....	Position.....
Date.....	Date.....

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This agreement is dated **1 September 2016**

PARTIES

- (1) **Torbay Council** whose principal place of business is at the Town Hall Castle Circus Torquay Devon TQ1 3DR (**Authority**).
- (2) **<Supplier>** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED ADDRESS] (**Supplier**).

BACKGROUND

- (A) The Authority placed a contract notice TORB001-DN169625-18025460 on 1 July 2016 in Contracts Finder seeking expressions of interest from potential service providers for the provision of Services to the Authority under a framework agreement.
- (B) Following receipt of expressions of interest, the Authority invited potential service providers (including the Supplier) to tender for the provision of stabilisation works to cliffs and former inland quarries.
- (C) On the basis of the Supplier's Tender, the Authority selected the Supplier to enter a framework agreement to provide services to the Authority who places Orders for Services in accordance with this Framework Agreement.
- (D) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Supplier under this Framework Agreement.
- (E) It is the Parties' intention that the Authority has no obligation to place Orders with the Supplier under this Framework Agreement or at all.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

Approval: means the prior written approval of the Authority.

Audit: means an audit carried out pursuant to Clause 10

Auditor: means the National Audit Office or an auditor appointed by the Authority as the context requires.

Authorised Representative: means the persons respectively designated as such by the Authority and the Supplier.

Award Criteria: means the Competed Services Award Criteria as the context requires.

Call-off Terms and Conditions: means the terms and conditions in Schedule 5.

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Collateral Warranty: means a document in the form set out in Schedule 8

Commencement Date: means 1 September 2016

Competed Services: means the competed services set out in Part 1 of Schedule 1.

Competed Services Award Criteria: means the award criteria to be applied to Supplemental Tenders received through mini-competitions held for the award of Contracts for Competed Services as set out in Schedule 2 and the Order Form.

Complaint: means any formal complaint raised by any The Authority in relation to the performance under the Framework Agreement or any Contract in accordance with clause 20.

Confidential Information: means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Authority and the Supplier comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to clause 4.3).

Default: means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Data Protection Legislation: means the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Environmental Information Regulations: mean the Environmental Information Regulations 2004 (*SI 2004/3391*) [EIR] together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Framework Agreement: means this agreement and all Schedules to this agreement.

Framework Agreement Variation Procedure: means the procedure set out in Schedule 7.

Framework Providers: means the Supplier and other suppliers appointed as framework providers under this Framework Agreement.

Framework Year: means a period of 12 months, commencing on the Commencement Date.

[Guarantee: or Indemnity] means the deed of guarantee in favour of the Authority [or relevant Other Contracting Body] entered into by the Guarantor [on or about the date of this Framework Agreement] (which is in the form set out in Schedule [NUMBER]) or any guarantee acceptable to the Authority [or the relevant Other Contracting Body] that replaces it from time to time.]

[Guarantor: means [NAME].]

Guidance: means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

ICC Minor Works Infrastructure Conditions of Contract 2011

Information: has the meaning given under section 84 of the FOIA.

Intellectual Property Rights: means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

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 of any Regulatory Body.

Management Information: means the management information specified in Schedule 6.

Month: means a calendar month.

Order: means an order for Services sent by any The Authority to the Supplier in accordance with the award procedures in Clause 4.

Order Form: means a document setting out details of an Order in the form set out in Schedule 4 or as otherwise agreed in accordance with Clause 4.7.

Parent Company: means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. **Holding Company** shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: means the Authority and/or the Supplier.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Authority.

Regulations: means the Public Contracts Regulations 2015 (*SI 2015/102*).

Regulatory Bodies: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority.

Requests for Information: means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

Services: means the services detailed in Schedule 1.

Staff: means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Framework Agreement or Contracts.

Standard Services: means the standard services referred to in Schedule 1.

Standard Services Award Criteria: means the award criteria to be applied for the award of Contracts for Standard Services as set out in Schedule 2.

Subcontract: means; any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party and includes any contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

Subcontractor: the contractors or service providers that enter into a Subcontract with the Supplier.

Supplemental Tender: means the documents submitted to the Authority in response to the The Authority's invitation to Framework Providers for formal offers to supply it with Competed Services.

Tender: means the tender submitted by the Supplier to the Authority on [DATE].

Term: means the period commencing on the Commencement Date and ending on [DATE] or on earlier termination of this Framework Agreement.

Termination Date: means the date of expiry or termination of this Framework Agreement.

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

Year: means a calendar year.

1.2 The interpretation and construction of this Framework Agreement shall all 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) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (g) the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;
- (h) references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
- (i) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

2. TERM OF FRAMEWORK AGREEMENT

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

3. SCOPE OF FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier to the Authority.
- 3.2 The Authority appoints the Supplier as a Framework Provider of the Services and the Supplier shall be eligible to receive Orders for such Services from the Authority during the Term.
- 3.3 The Authority may at its absolute discretion and from time to time order Services from the Supplier in accordance with the ordering procedure set out in Clause 4 during the Term. If there is a conflict between Clause 4 and the Regulations, the Regulations shall take precedence.
- 3.4 If and to the extent that any Services under this Framework Agreement are required the Authority shall:
 - (a) enter into a contract with the Supplier for these Services materially in accordance with the terms of the Contract; and
 - (b) comply with the ordering procedure in Clause 4.
- 3.5 The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Services and that the Authority is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.
- 3.6 Not used

4. AWARD PROCEDURES

Awards under the Framework Agreement

- 4.1 If the Authority decides to source Services through the Framework Agreement then it may satisfy its requirements for Competed Services by awarding a Contract following a mini-competition conducted in accordance with the requirements of Clause 4.2.

Competed Services (awards following further competitions)

- 4.2 Where the Authority orders Competed Services under the Framework Agreement it shall:
 - (a) Call-Off from the Framework by Further Competition processes between all of the Contractors on the Framework, based on price only. Each Contractor will be invited to Tender for each of the individual Contracts.

- (b) supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
 - (c) invite tenders by conducting a mini-competition for its Competed Services requirements in accordance with the Regulations and Guidance and in particular:
 - (i) consult through an electronic portal with the Framework Providers capable of performing the Contract for the Competed Services requirements and invite them within a specified time limit to submit an expression of interest and then if successful a Supplemental Tender;
 - (ii) set a time limit for the receipt by it of the Supplemental 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
 - (iii) keep each Supplemental Tender confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;
 - (d) apply the Competed Services Award Criteria to any compliant Supplemental Tenders submitted through the mini-competition; and
 - (e) subject to Clause 4.5 place an Order with the successful Framework Provider.
- 4.4 The Supplier agrees that all Supplemental Tenders submitted by the Supplier in relation to a mini-competition held pursuant to this Clause 4 shall remain open for acceptance for 30 days (or such other period specified in the invitation to tender issued by the Authority in accordance with this Clause 4).
- 4.5 Notwithstanding the fact that the Authority has followed the procedure set out above for Competed Services, the Authority may cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Contract. Nothing in this Framework Agreement shall oblige the Authority to place any Order for Services.

Form of Order

- 4.7 Subject to Clause 4.1 to Clause 4.6 above, the Authority may place an Order with the Supplier by serving an order in writing in substantially the form set out in Schedule 4 or such similar or analogous form agreed with the Supplier including systems of ordering involving fax, e-mail or other online solutions.

Accepting and declining Orders

- 4.8 Following receipt of an Order, the Supplier shall promptly and in any event within a reasonable period determined by the Authority and notified to the Supplier in writing at the same time as the submission of the Order (which in any event shall not exceed **[three OR [NUMBER]]** Working Days) acknowledge receipt of the Order and either:
- (a) notify the Authority in writing and with detailed reasons that it is unable to fulfil the Order;
or
 - (b) notify the Authority that it is able to fulfil the Order by signing and returning the Order Form.
- 4.9 If the Supplier:
- (a) notifies the Authority that it is unable to fulfil an Order; or

- (b) the time limit referred to in Clause 4. has expired; then the Order shall lapse [and the Authority may then send that Order to another Framework Provider in accordance with the procedure set out in clause Clause 4.2 (d)].

4.10 If the Supplier modifies or imposes conditions on the fulfillment of an Order, then the Authority may either:

- (a) reissue the Order incorporating the modifications or conditions; or
- (b) treat the Supplier's response as notification of its inability to fulfil the Order and the provisions of Clause 4.9 shall apply.

4.11 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Authority. Accordingly, the Supplier shall sign and return the Order Form which shall constitute its offer to the Authority. The Authority shall signal its acceptance of the Supplier's offer and the formation of a Contract by counter-signing the Order Form.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

5.1 The Supplier shall perform all Contracts entered into with the Authority in accordance with:

- (a) the requirements of this Framework Agreement; and
- (b) the terms and conditions of the respective Contracts.

5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the Contract;
- (b) the Order Form except Appendices B (Supplier's Tender) and C (Supplemental Tender) to the Order Form;
- (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form, except Schedule 1, part 2, Appendix B (the Supplier's Tender), and Appendix C to the Order Form (Supplemental Tender);
- (d) any other document referred to in the clauses of the Contract; and
- (e) Schedule 1, part 2 of the Framework Agreement and Appendix B to the Order Form (the Supplier's Tender), and Appendix C to the Order Form (Supplemental Tender).

6. PRICES FOR SERVICES

The prices offered by the Supplier for Contracts to the Authority for Competed Services shall be based on the prices set out in the Pricing Matrices and tendered in accordance with the requirements of the mini-competition held pursuant to Clause 4.

SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS

7. WARRANTIES AND REPRESENTATIONS

The Supplier warrants and represents to the Authority that:

- (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
- (b) this Framework Agreement is executed by a duly authorised representative of the Supplier;
- (c) in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Authority or Other Contracting Bodies;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract; and
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- (h) In performing its obligations under the agreement, the Supplier shall [and shall ensure that each of its subcontractors shall] comply with:
 - (a) all applicable laws, statutes, regulations [and codes] from time to time in force [including [but not limited to] the Modern Slavery Act 2015]; and
 - (b) in accordance with The Authority's Anti-slavery Policy (if any)

8. SERVICE PRE-REQUISITES

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

SUPPLIER'S INFORMATION OBLIGATIONS

9. REPORTING AND MEETINGS

- 9.1 The Supplier shall submit Management Information to the Authority in the form set out in Schedule 6 throughout the Term on the last day of every third Month and thereafter in respect of any Contract entered into with the Authority.
- 9.2 The Authorised Representatives shall meet in accordance with the details set out in Schedule 6 and the Supplier shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.
- 9.3 The Authority may make changes to the nature of the Management Information that the Supplier is required to supply and shall give the Supplier at least one month's written notice of any changes.

10. RECORDS AND AUDIT ACCESS

- 10.1 The Supplier shall keep and maintain until 6 years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, and until 12 years the Contracts entered into with the Authority signed under seal and the amounts paid by the Authority.
- 10.2 The Supplier shall keep the records and accounts referred to in Clause 10.1 above in accordance with good accountancy practice.
- 10.3 The Supplier shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 10.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of 6 years after expiry of the Term to the Authority and the Auditor as Clause 10.1.
- 10.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 10.6 Subject to the Authority's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
 - (a) all information requested by the Auditor within the scope of the Audit;
 - (b) reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Services; and
 - (c) access to the Staff.
- 10.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 10, unless the Audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

11. CONFIDENTIALITY

11.1 Subject to Clause 11.2, the Parties shall keep confidential all matters relating to this Framework Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

11.2 Clause 11.1 shall not apply to any disclosure of information:

- (a) required by any applicable law;
- (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;
- (c) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 11.1;
- (e) by the Authority of any document to which it is a party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;
- (f) to enable a determination to be made under Clause 21;
- (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
- (i) by the Authority relating to this Framework Agreement and in respect of which the Supplier has given its prior written consent to disclosure.

12. INSURANCE

12.1 The Authority shall specify its Insurance Requirements when it issues its request for Standard or Competed Services.

13. DATA PROTECTION

13.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

13.2 Notwithstanding the general obligation in Clause 13.1, where the Supplier is processing Personal Data as a Data Processor for the Authority, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;

- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to Clause 13.2; and ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

13.3 Intellectual Property

13.3.1 The Supplier hereby assigns to the Authority, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services .

13.3.2 The Supplier shall, promptly at the Authority's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of this agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Authority in accordance with clause 13.3.1.

14. FREEDOM OF INFORMATION

14.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

14.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

15. PUBLICITY

15.1 Unless otherwise directed by the Authority, the Supplier shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.

15.2 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Authority, including any examination of this Framework Agreement by the Auditor or otherwise.

15.3 The Supplier shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

16. GUARANTEE

Before the Commencement Date and at the request of the Authority the Supplier shall procure that the Guarantor shall:

(a) execute and deliver to the Authority the Guarantee;

(b) deliver to the Authority a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

17. TERMINATION

Termination on Default

17.1 The Authority may terminate the Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice:

(a) where the Supplier commits a material breach and:

(i) the Supplier has not remedied the material breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

(ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or

(b) where any The Authority terminates a Contract awarded to the Supplier under this Framework Agreement as a consequence of a material breach by the Supplier;

(c) any warranty given by the other party in Clause 7 of this agreement is found to be untrue or misleading;

(d) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

17.2 For the purposes of Clause 17.1 (a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

(a) a substantial portion of this agreement; or

(b) any of the obligations set out in clauses [NUMBERS], over 14 working days. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

Termination on insolvency and Change of Control

17.3 Without affecting any other right or remedy available to it, the Authority may terminate this agreement with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier];
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier];
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;]
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.3(a) to Clause 17.3 (h) (inclusive); or
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.4 The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate the Framework Agreement by giving notice in writing to the Supplier with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control;

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

Termination by Authority for convenience

17.5 The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving a minimum of three Months' written notice to the Supplier and all other Framework Providers. The Parties acknowledge that if the Authority exercises its rights under this Clause 17.5 it shall exercise its equivalent rights under all agreements with the Framework Providers.

18. SUSPENSION OF SUPPLIER'S APPOINTMENT

Without prejudice to the Authority's rights to terminate the Framework Agreement in Clause 17 above, if a right to terminate this Framework Agreement arises in accordance with Clause 17, the Authority may suspend the Supplier's right to receive Orders from the Authority in any or all Supplier's Lots by giving notice in writing to the Supplier. If the Authority provides notice to the Supplier in accordance with this Clause 18, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

19. CONSEQUENCES OF TERMINATION AND EXPIRY

- 19.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfill its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 1.
- 19.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 19.3 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Supplier shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Supplier's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
- 19.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.
- 19.5 The provisions of Clause 7, Clause 10, Clause 11, Clause 12, Clause 13, Clause 14, Clause 15, Clause 19, Clause 22, and Clause 31 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

20. COMPLAINTS HANDLING AND RESOLUTION

20.1 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

21. DISPUTE RESOLUTION

21.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Authority and [EMPLOYEE TITLE] of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the [EMPLOYEE TITLE] of The Authority and [EMPLOYEE TITLE] of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Authority and [SENIOR OFFICER TITLE] of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the [SENIOR OFFICER TITLE] of the Authority and [SENIOR OFFICER TITLE] of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 90 days after the date of the ADR notice.

21.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under Clause 31 which clause shall apply at all times.

GENERAL PROVISIONS

22. PREVENTION OF BRIBERY

22.1 The Supplier:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Contract made under it commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Framework Agreement.

22.2 The Supplier shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 20 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause 22 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

22.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of Clause 22.1 is suspected or known, the Supplier must notify the Authority immediately.

22.5 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of Clause 22, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents. This obligation shall continue for six years following the expiry or termination of this Framework Agreement.

22.6 The Authority may terminate this Framework Agreement by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches Clause 22.1 (a) with the authority or with the actual knowledge of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be)

22.7 Any notice of termination under Clause 22.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Framework Agreement will terminate.

22.8 Despite Clause 21, any dispute relating to:

- (a) the interpretation of this Clause 22; or
- (b) the amount or value of any gift, consideration or commission, shall be determined by the Authority and its decision shall be final and conclusive.

22.9 Any termination under this Clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

23. SUBCONTRACTING AND ASSIGNMENT

23.1 Subject to Clause 23.2 and Clause 23.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other party, neither may the Supplier subcontract the

whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Authority.

23.2 The Authority shall be entitled to novate the Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

23.3 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the agreement where:

- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
- (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

23.4 Payment to sub-contractors under the Public Contract Regulations 2015;

The Supplier shall include in every Sub-contract;

- a) a right for the Contractor to terminate that Sub-contract if the relevant Sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and
- b) a requirement that the Sub-contractor includes a provision having the same effect as (a) above in any Sub-contract which it awards.

In this clause, 'Sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

24. VARIATIONS TO FRAMEWORK AGREEMENT

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 7.

25. THIRD PARTY RIGHTS

25.1 Except as provided in Clause 3, Clause 4 and Clause 7.1, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

25.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

26. SEVERANCE

26.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-

provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

- 26.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

27. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

28. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

29. ENTIRE AGREEMENT

- 29.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this Clause 29 shall operate to exclude any liability for fraud.
- 29.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this Framework Agreement.

30. NOTICES

- 30.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.
- 30.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), (or fax or email confirmed [in either case] by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause
- 30.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or fax or sooner where the other Party acknowledges receipt of such letters, or fax or e-mail.
- 30.3 For the purposes of Clause 30.2, the address of each Party shall be:

(a) For the Authority:

[NAME OF AUTHORITY'S REPRESENTATIVE]

Address:

For the attention of:

Tel:

Fax:

E-mail:

(b) For the Supplier:

[NAME OF SERVICE PROVIDER'S AUTHORISED REPRESENTATIVE]

Address:

For the attention of:

Tel:

Fax:

E-mail:

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

31. GOVERNING LAW AND JURISDICTION

31.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

31.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

SERVICES

PART 1

Services

[SPECIFICATIONS FOR ALL STANDARD SERVICES AND COMPETED SERVICES]

PART 2

Appendix 1: [The Supplier's Tender]

SCHEDULE 2

AWARD CRITERIA

Call-Offs from this Framework will be subject to Further Competition and evaluated 100% on price, subject to meeting minimum predetermined criteria as follows:

- Evidence of providing structured method statements pertaining to similar works.
- Evidence of completing similar works on time and within budget.
- Proof of technician training / accreditation.
- Proof of working in tidal zones.
- Proof of directly employed labour force at the required level.

FRAMEWORK PROVIDERS AND THEIR RANKING

PART 1

Standard Services Award Criteria

Criterion number

Criterion

Percentage weightings (or rank order of importance where applicable)

1

[As set out in ITT]

[As set out in ITT]

2

[As set out in ITT]

[As set out in ITT]

3

[As set out in ITT]

[As set out in ITT]

4

[As set out in ITT]

[As set out in ITT]

5

[As set out in ITT]

[As set out in ITT]

[PART 2

Competed Services Award Criteria]

Criterion number

Criterion

Percentage weightings (or rank order of importance where applicable)

1

[As set out in ITT]

To be set by the Authority conducting mini-competition

2

[As set out in ITT]

To be set by the Authority conducting mini-competition

3

[As set out in ITT]

To be set by the Authority conducting mini-competition

4

[As set out in ITT]

To be set by the Authority conducting mini-competition

5

[As set out in ITT]

To be set by the Authority conducting mini-competition

SCHEDULE 3 – NOT USED

SCHEDULE 4 – NOT USED

Appendix 1: Specification for the Services

Appendix 2: Supplier's Tender

Appendix 3: Supplemental Tender (for Competed Services)

SCHEDULE 5

CALL-OFF TERMS AND CONDITIONS

All contracts awarded under this framework will be subject to ICC Minor Works Infrastructure Conditions of Contract – 2011 or any update thereof in force at the time of the award.

SCHEDULE 6

CONTRACT MANAGEMENT

1. MEETINGS

1.1 Type

1.2 Quorum

1.3 Frequency

1.4 Agenda

2. REPORTS

2.1 Type

2.2 Contents

2.3 Frequency

2.4 Circulation list

SCHEDULE 7

FRAMEWORK AGREEMENT VARIATION PROCEDURE

1. INTRODUCTION

- 1.1 Schedule 7 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.
- 1.2 The Authority may propose a variation to the Framework Agreement under Schedule 7 only where the variation does not amount to a material change in the Framework Agreement or the Services.

2. PROCEDURE FOR PROPOSING A VARIATION

- 2.1 Except where Paragraph 5 applies, the Authority may propose a variation using the procedure contained in this Paragraph 2.
- 2.2 In order to propose a variation, the Authority shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**Notice of Variation**).
- 2.3 The Notice of Variation shall:
 - (a) contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
- 2.4 On receipt of the Notice of Variation, each Framework Provider has 14 days to respond in writing with any objections to the variation.
- 2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within 14 days of receipt.
- 2.6 On receipt of a signed agreement from each Framework Provider, the Authority shall notify all Framework Providers in writing of the commencement date of the variation.

3. OBJECTIONS TO A VARIATION

In the event that the Authority receives one or more written objections to a variation, the Authority may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

4. CHANGES TO THE PRICING MATRICES

- 4.1 Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Authority may require further evidence from the Framework Provider that any additional costs to the Framework Provider will be kept to a minimum.
- 4.2 The Authority may require the Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.

- 4.3 Where a change to a Framework Provider's Pricing Matrices is agreed by the Authority, the Authority shall notify its acceptance of the change to the Framework Provider in writing.
- 4.4 In the event that the Authority and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Authority may:
- (a) withdraw the variation; or
 - (b) propose an amendment to the variation.

5. VARIATIONS THAT ARE NOT PERMITTED

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

- (a) may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or
- (b) is in contravention of any Law.

Signed by [NAME OF DIRECTOR]

for and on behalf of [NAME OF AUTHORITY]

.....

Director

Signed by [NAME OF DIRECTOR]

for and on behalf of [NAME OF SERVICE PROVIDER]

.....

Director

SCHEDULE 8 – NOT USED