

# FREETHS

# DRAFT

DATED

2021

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- (1) CHERWELL DISTRICT COUNCIL
- (2) [CONTRACTOR]

FRAMEWORK AGREEMENT

Relating to

the redevelopment of Marks and Spencer's unit  
on 35-36 Bridge Street, Banbury

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This Agreement is made on the                      day of                      2021

**BETWEEN:**

(1) **CHERWELL DISTRICT COUNCIL** of Bodicote House, Bodicote, Banbury, Oxon, OX15 4AA ("the Employer"); and

(2) [X] of [X] with registered number [X] ("the Contractor").

(together the 'Parties' and individually a 'Party')

**WHEREAS**

- (A) On [ ] the Employer invited potential contractors (including the Contractor) to tender for the provision of construction services and the Contractor submitted a tender on [ ] (the 'Tender').
- (C) On the basis of the Tender, the Employer selected the Contractor to enter into a framework agreement in respect of the [ ] (the 'Development'). The Development may be undertaken in four or more phases (each referred to herein as a 'Project').
- (D) The Contractor has agreed to enter into this Agreement with the Employer for the provision of construction works and associated services as instructed by the Employer under this Agreement.
- (E) This Agreement provides that the Employer may (in its sole discretion) enter into separate Call-Off Contract with the Contractor in respect of each Project.
- (F) The Parties acknowledge that this Agreement does not provide any form of guarantee of work and that the Employer has not given a commitment to use the Contractor; accordingly these arrangements are speculative in nature.

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

Affiliate	any person, partnership, joint venture, corporation or other form of enterprise that directly or indirectly is Controlled by, or is under common Control with the Contractor or any company of which the Contractor is a Subsidiary;
Agreement	this agreement, including its Schedule;
Best Value	providing the Services in such a way that achieves a balance between quality and costs to meet Employer and End User needs;
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Call-Off	the process of the Employer appointing the Contractor leading to a Call-Off Contract;

Call-Off Contract		an agreement between the Employer and the Contractor executed by the Employer and the Contractor substantially in the form of the Model Call-Off Contract which shall include the Schedule of Amendments contained in Schedule A;
Commencement Date		[X];
Confidential Information		any information designated as confidential by the Party disclosing that information at the time of its disclosure, or which is clearly confidential in its nature;
Considerate Constructors Scheme		as provided for within Clause 4.3;
Construction 2025		the strategy for construction set out by HM government under reference BIS/13/955;
Contractors Proposals		as defined in the Call-Off Contract;
Control	or	as defined in section 1124 of the Corporation Tax Act 2010 and the expression change in control shall be construed accordingly;
Controlled		
Employer Representative(s)		the person or persons appointed by the Employer and notified to the Contractor from time-to-time;
Disclosure and Barring Service		the service established pursuant to the Protection of Freedoms Act 2012;
Employers Requirements		as defined in the Call-Off Contract;
End User		the ultimate user of the building or any part of the building;
Environmental Information Regulations		the Environmental Information Regulations 2004;
Event of Default		has the meaning set out in Clause 10;
FOIA		the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to that Act;
Framework		this framework;
Holding Company		has the meaning given in section 1159 of the Companies Act 2006; in the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting

rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;

Industry Practice	Best	using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, competent, appropriately qualified and suitably experienced person engaged in a similar type of undertaking under the same or similar circumstances from time to time;
Insolvency Event		<p>any of the following:</p> <ul style="list-style-type: none"> <li>(a) any arrangement or composition with or for the benefit of creditors which does not involve a continuation of the Contractor's business in the same or substantially the same form (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to the person in question; any commencement of negotiations or making of a proposal for any of the same;</li> <li>(b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer taking possession or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within five (5) Business Days) upon the whole or part of the assets of the Contractor; an application being made to court for any of these;</li> <li>(c) the Contractor ceasing to carry on business;</li> <li>(d) a petition being filed, a notice given, a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of the Contractor;</li> <li>(e) the Contractor suspending or threatening to suspend payment of its debts as they fall due or admitting inability to pay its debts with the meaning of section 123 of the Insolvency Act 1986;</li> <li>(f) the Employer's reasonable anticipation that any one or more of the above is likely to occur in relation to the Contractor in the near future;</li> </ul>
Insurances		as the context requires, all or any of the insurances required to be maintained by the Contractor pursuant to this Agreement;
Intellectual Property		any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including all trademarks, service marks, patents, designs, utility models, applications for any of the foregoing, copyrights, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how;
IPR Data		(a) all drawings, reports, documents, plans, software, formulae, calculations and all other data relating to the provision of the Services; and

		(b) any other materials, documents and or data acquired, brought into existence or used in relation to a Call-Off Contract or this Agreement;
Law		<p>(a) any Act of Parliament;</p> <p>(b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;</p> <p>(c) any exercise of the Royal Prerogative; and</p> <p>(d) any rights which are recognised and available in domestic law pursuant to Section 4 of the European Union (Withdrawal) Act 2018,</p> <p>in each case in force in the United Kingdom;</p>
Letter of Intent		a pre-contractual letter entered into between the Employer and Contractor;
Model Call-Off Contract		a building contract based on the JCT Design and Build Contract 2016 Edition as amended by a schedule of amendments in substantially the form provided in the Schedule with such further amendments as the Employer may reasonably require to reflects the specific details of any Project;
Party / Parties		a party to this Agreement;
Performance Ratings		the ratings created within the duration of this Framework, by the Employer based on the performance of Contractors;
Personal Data		has the meaning set out in the Data Protection Act 2018;
Request Information	for	any actual or purported request for information under the FOIA or the Environmental Information Regulations;
Services		those works and services which are carried out by the Contractor for the Employer in accordance with and pursuant to a Call-Off Contract;
Site		any site where any Services are being or are to be carried out;
Subcontractor		a subcontractor of the Contractor which is engaged to provide any part of the Services;
Subsidiary		has the meaning set out in Section 1159 of the Companies Act 2006; in the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;
Term		the period from the Commencement Date until the date of termination of this Agreement.

- 1.2. As used in this Agreement:
- 1.2.1. the masculine includes the feminine and the neuter;
  - 1.2.2. the singular includes the plural and vice versa; and
  - 1.2.3. the words 'include', 'includes' and 'including' are to be construed as if they were immediately followed by the words 'without limitation'.
- 1.3. A 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 statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it.
- 1.4. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.5. References to 'Clauses' and 'Schedule' are, unless otherwise provided or the context so necessitates, references to the clauses of and schedule to this Agreement. References to 'Paragraphs' are, unless otherwise provided, references to paragraphs of the schedule in which the references are made.
- 1.6. Reference to any English legal term for any action, remedy, method of judicial proceedings, legal document, legal status, court official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term.
- 1.7. Terms or expressions contained in this Agreement which are capitalised but which do not have an interpretation in Clause 1.1 shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.

## **2. PURPOSE OF AGREEMENT**

The principal purposes of this Agreement are to:

- 2.1. establish a relationship between the Parties to enable the Contractor to undertake and complete each Project pursuant to the Call-Off Contract(s); and
- 2.2. ensure that the Employer and the Contractor shall act in a spirit of mutual trust and co-operation at all times.

## **3. COMMENCEMENT, DURATION AND TERMINATION**

- 3.1. This Agreement shall commence on the Commencement Date and shall terminate on the [ ] anniversary of that date or earlier in accordance with the provisions of this Agreement (provided always that this shall not prevent the continuity of any works or services pursuant to a Call-Off Contract previously entered into).
- 3.2. The term set out in Clause 3.1 above may be extended for a period of an additional [2 years] at the discretion of the Employer and to be on substantially like terms.

- 3.3. The Employer may terminate this Agreement at any time and for any reason by giving the Contractor written notice.
- 3.4. The Contractor shall not be entitled to any compensation on termination of this Agreement and no guarantees or commitments are made as to the value of the Services to be commenced or performed over the duration of this Agreement.
- 3.5. Provisions surviving termination
  - 3.5.1. Notwithstanding the termination of this Agreement, such termination shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination.
  - 3.5.2. Notwithstanding any other provision of this Agreement, the termination of this Agreement shall not affect the continuing rights and obligations of the Parties under Clauses 1, 3, 11, 12, 13, 16, 17, 22, 23, and 24.

#### **4. SERVICE DEVELOPMENT**

The Employer and the Contractor shall work together on continuous development and improvement matters as set out below.

##### **4.1. Supply Chain**

- 4.1.1. The Parties shall, following the Commencement Date and thereafter throughout the course of the Agreement, work together in good faith to support local supply chains of both subcontractors and material suppliers for the Framework in such a manner which is consistent with:
  - 4.1.1.1. the UK Construction Industry Competition Law Code of Conduct;
  - 4.1.1.2. any legal requirements which may apply for the procurement of relevant goods or services; and which will deliver, as far as practicable, Best Value for the Employer;
  - 4.1.1.3. the requirements on local authorities together with other public bodies to pay suppliers within 30 days set out in Regulation 113 of the Public Contracts Regulations 2015 (including by the Contractor meeting the obligations for prompt payment with its own sub-contractors and suppliers); and
  - 4.1.1.4. general principles of best practice and good faith.

##### **4.2. Social Responsibility**

- 4.2.1. The Parties acknowledge that the Employer is a local authority and is therefore committed to acting in the public interest and endeavouring to deliver community benefit in its procurement of services and work.
- 4.2.2. The Contractor shall comply with the Employer's social responsibility policies notified to the Contractor from time to time.

#### 4.3. Considerate Constructors Scheme

The Contractor shall at all times maintain membership of the Considerate Constructors Scheme ([www.ccscheme.org.uk](http://www.ccscheme.org.uk)) with respect to either the relevant site or in the name of the Contractor and provide details of such registration to the Employer upon request.

#### 4.4. Competent Operator Schemes

The Contractor shall operate in accordance with the Construction Skills Certification Scheme ([www.cscs.uk.com](http://www.cscs.uk.com)) ("CSCS") or an equivalent scheme and shall require operators on site to be registered with CSCS or an equivalent industry recognised competency scheme and shall maintain that operators on site hold and are able to produce on demand, the "CSCS Card" (or equivalent).

#### 4.5. The Contractor shall ensure that it and all its employees comply with such other codes of conduct or schemes as the Employer shall require from time to time.

### 5. SERVICES TO BE PROVIDED

#### 5.1. Services to be provided by the Contractor

- 5.1.1. The Contractor shall provide the Services on the terms of this Agreement and the relevant Call-Off Contract(s) as and when required by the Employer.
- 5.1.2. The Contractor shall at all times during the Term maintain the organisational and technical ability and capacity to provide the Services in accordance with this Agreement and Call-Off Contracts as the Services may be required from time to time by the Employer.
- 5.1.3. The Contractor shall enter into a Call-Off Contract with the Employer, in accordance with the provisions of this Agreement, for each Project upon request by the Employer.
- 5.1.4. The Contractor shall provide to the Employer such information as is required to be provided in the appropriate template Call-Off Contract together with such other information requested by the Employer.
- 5.1.5. No call-off arrangement shall be entered into after termination or expiry of this Agreement, except where provided for within this Agreement.
- 5.1.6. The Contractor will ensure that at no time will it propose or enter into a Call-Off Contract which contains substantial or material variations from the Model Call-Off Contract.
- 5.1.7. The Contractor may provide Services to the Employer on an interim basis, pursuant to a "Letter of Intent" in exceptional circumstances pending the agreement to a form of Call-Off Contract with the Employer.

### 6. PRE-ENGAGEMENT DISCUSSIONS

- 6.1. The Contractor shall, at the oral or written request of the Employer, meet and discuss (as appropriate) with the Employer such initial pre-engagement matters as the Employer requires, the Contractor shall make no charge for these discussions or work

carried out under this heading. A request under this Clause 6 shall in no case mean that further related work shall be awarded to the Contractor.

## **7. RIGHTS AND OBLIGATIONS IN RELATION TO CALL-OFF REQUESTS AND CALL-OFF CONTRACTS**

- 7.1. Notwithstanding any other term under this Agreement, the Employer may at any time decline to enter into a Call-Off Contract.
- 7.2. The Contractor shall use its best endeavours to ensure that it enters into a Call-Off Contract with the Employer in each case before it provides any Services.
- 7.3. The Contractor shall demonstrate Best Value to the Employer in relation to the delivery of Services, to the Employer's reasonable satisfaction and in such a manner as the Employer may require.
- 7.4. Prior to entering into any Call-Off Contract, the Employer shall provide the Contractor with the Employers Requirements. The Contractor shall then provide to the Employer (and the Employer's Representative) for every Project a detailed proposal of:
  - 7.4.1. The Contractors Proposals;
  - 7.4.2. the Contract Sum (as defined in the Call-Off Contract) including a breakdown of the Contract Sum;
  - 7.4.3. the draft Contract Particulars (as defined in the Call-Off Contract);
  - 7.4.4. a draft programme for the Project; and
  - 7.4.5. evidence of the Contractors Insurances (if not provided already or if they have or are about to expire).

The Contractor and the Employer shall act reasonably to agree the information set out above for inclusion in the Call-Off Contract. The cost of preparing these proposals will be deemed included in the Contract Sum as defined in the relevant Call-Off Contract to which the proposal relates.

- 7.5. Payments due under this Agreement

Unless specifically identified in this Agreement, no payment shall be made by or due from the Employer to the Contractor for obligations or duties of the Contractor under this Agreement.

## **8. EARLY WARNINGS**

- 8.1. Each Party shall give the other Party an early warning by notifying the other promptly of any matter which could in its opinion:
  - 8.1.1. lead to a material breach of this Agreement;
  - 8.1.2. result in an Event of Default;and the Employer shall enter the early warning matters in a risk register, respecting any requirement of such notification constituting Confidential Information.
- 8.2. Either Party may require the other Party to attend a risk reduction meeting to discuss early warning matters. The Parties shall co-operate in:

- 8.2.1. making and considering proposals for how the effect of the relevant matters can be avoided or reduced;
  - 8.2.2. deciding on the actions to be taken and who, in accordance with this Agreement, shall take them;
  - 8.2.3. deciding which risks have been avoided or have been passed and can be removed from the risk register.
- 8.3. The Employer shall revise the risk register to record the decisions made at each risk reduction meeting and issue the revised risk register to the Contractor.

## **9. CONTRACTOR UNDERPERFORMANCE**

- 9.1. If the Contractor:
- 9.1.1. has been prosecuted for breach of health and safety legislation and/or has been issued with a prohibition notice or an improvement notice;
  - 9.1.2. has committed a material breach of its obligations under this Agreement (whether or not such failure also constitutes an Event of Default);
  - 9.1.3. fails to execute and return an agreed Call-Off Contract within 10 Business Days of receipt of an engrossment from the Employer;
  - 9.1.4. fails to comply with agreed regular monitoring requirements;
  - 9.1.5. has failed without reasonable justification to accept call-off opportunities;
  - 9.1.6. fails to proceed diligently and in an open and collaborative manner;
  - 9.1.7. fails to address defects resulting from Call-Off Contracts in accordance with the provisions of those Call-Off Contracts; or
  - 9.1.8. fails to observe fair practice and prompt payment principles as set out within this Agreement,

then the Employer may treat such failure as an Event of Default.

## **10. DEFAULT AND TERMINATION**

- 10.1. An Event of Default by the Contractor means any of the following events or circumstances:
- 10.1.1. termination of any Call-Off Contract by reason of abandonment of the works or Services or other material breach of the Contractor's obligations under a Call-Off Contract;
  - 10.1.2. an Event of Default under Clause9;
  - 10.1.3. the Contractor committing a material breach of its obligations under this Agreement which is not capable of remedy;

- 10.1.4. the Contractor ceasing to provide or procure the provision of all or a substantial part of the Services in accordance with this Agreement;
  - 10.1.5. the Contractor failing to pay any sum or sums due to the Employer under this Agreement or a Call-Off Contract (which sums are not in good faith dispute) and such failure continues for 20 Business Days from receipt by the Contractor of a notice of non-payment from the Employer; or
  - 10.1.6. the Contractor or any person who has powers of representation or control are convicted of any of the offences set out in Regulation 57(1) of the Public Contracts Regulations 2015; or
  - 10.1.7. an Insolvency Event occurs in relation to the Contractor; or
  - 10.1.8. there is a change in Control or substantial restructuring of the Contractor which has not been consented to in writing by the Employer; or
  - 10.1.9. the making of a material variation to the form of a Call-Off Contract which has not been approved by the Employer in writing; or
  - 10.1.10. any of the events set out in Regulation 33(1)(a) to (c) arise.
- 10.2. An Event of Default by the Employer means an Insolvency Event (where relevant) occurs in relation to the Employer (where applicable).
- 10.3. Following an Event of Default, the Party not in default may, at its discretion, terminate this agreement with immediate effect on written notice to the other Party; provided always that the Employer may not terminate this Agreement following a change of Control of the Contractor pursuant to Clause 10.1.8 above, if the Contractor is able to demonstrate to the Employer's reasonable satisfaction that such change in Control is not to its material detriment and/or it puts into effect appropriate measures to safeguard the Employer's commercial interests and the ongoing success of this Agreement.
- 10.4. Without prejudice to its other rights or remedies, if the Contractor has committed an Event of Default, the Employer may suspend the Contractor for a defined time and on such terms as the Employer requires and the Employer may terminate this Agreement on written notice if the Contractor fails to comply with any or all of these within the defined time and terms for such rectification.

## **11. CONSEQUENCES OF TERMINATION**

- 11.1. Notwithstanding the service of a notice to terminate this Agreement, the Employer and the Contractor shall continue to fulfil their obligations under this Agreement and all Call-Off Contracts entered into until the date of expiry or termination of this Agreement or such other date as required by the Employer.
- 11.2. Termination of this Agreement shall not cause any Call-Off Contract to terminate automatically nor affect its validity in any way. All Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 11.3. Within ten (10) Business Days of the date of termination of this Agreement, the Contractor shall destroy or delete any data and Confidential Information belonging to the Employer in the Contractor's possession, power or control, together with all

training manuals and other related documentation, and any other information and all copies owned by the Employer.

- 11.4. Other than data or information referred to in Clause 11.3, the Contractor shall retain and the Employer may require access to all data or information arising from or out of this Agreement from the Contractor for 12 years after the date of termination of this Agreement, provided that Call-Off Contracts shall at all times be retained according to the requirements for this retention agreed between the Employer and the Contractor.
- 11.5. Any provision of this Agreement which by its terms is to be performed or observed notwithstanding termination (or which is expressed to survive termination) shall survive the termination of this Agreement.

## **12. LIMITATION OF LIABILITY**

- 12.1. This Clause sets out the entire financial liability of the Employer (including any liability for the acts or omissions of its employees, agents, consultants and sub-consultants) to the Contractor in respect of:
  - 12.1.1. any breach of this Agreement;
  - 12.1.2. any failure, act or omissions by the Employer in relation to the process relating to Call-Off Contracts;
  - 12.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 12.3. Nothing in this Agreement limits or excludes the liability of the Employer:
  - 12.3.1. for death or personal injury resulting from the Employer's negligence; or
  - 12.3.2. for any damage or liability incurred by the Contractor as a result of fraud or fraudulent misrepresentation by the Employer.
- 12.4. Subject to Clause 12.3 and to the extent permitted by law, the Employer shall not be liable for:
  - 12.4.1. loss of profits; or
  - 12.4.2. loss of business; or
  - 12.4.3. depletion of goodwill and/or similar losses; or
  - 12.4.4. loss of anticipated savings; or
  - 12.4.5. loss of contract; or
  - 12.4.6. indirect loss; or
  - 12.4.7. consequential loss.

### 13. INSURANCE PROVISIONS

#### 13.1. The insurances

- 13.1.1. The Contractor shall procure at its own cost (for the benefit of the Employer) pursuant to individual Call-Off Contracts that the insurances set out in the table below, are taken out and maintained upon customary and usual terms and conditions prevailing for the time being in the insurance market, and from a provider authorised to write (by the relevant UK regulatory authority) such insurance business in the United Kingdom. The insurances shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010.

		Level of Cover	Basis of Cover	Period of Cover
1	Liability of the Contractor for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the Services, namely professional indemnity insurance (PII)	£5,000,000.00	On an "each and every claim" basis for any one occurrence or series of occurrences arising out of one single incident.	From the start date until 12 years after completion
2	Liability for death of or bodily injury to a person (not an employee of the Contractor) or loss of or damage to property resulting from an action or failure to take action by the Contractor (Public Liability)	£10,000,000.00	On an "each and every claim" basis for any one occurrence or series of occurrences arising out of one single incident.	From the start date until the defects certificate has been issued.
3	Liability for death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this Agreement (Employer's Liability)	£10,000,000.00	On an "each and every claim" basis for any one occurrence or series of occurrences arising out of one single incident.	From the start date until the defects certificate has been issued.

- 13.1.2. any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

- 13.1.3. The Contractor shall inform the Employer as soon as practicable if it considers that such insurance ceases to be available at commercially reasonable rates or terms and the Employer may, at its sole discretion, discuss alternative options.

#### 13.2. Acts or omissions of the Contractor

The Contractor shall not take any action or fail to take any reasonable action or (in so far as it is reasonably within its power) permit or allow others to take or fail to take any action (including failure to disclose any fact) as a result of which any of the Insurances may be rendered void, voidable, unenforceable or suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

13.3. Evidence of the Insurances

The Contractor shall supply, on request, (but in all instances no less than annually within 5 working days of each anniversary of the Commencement Date of this contract) to the Employer:

- 13.3.1. either evidence of insurance policies and terms or a letter from the Contractor's insurance broker, confirming that such insurances are in place; and
- 13.3.2. evidence that the premiums payable under the Insurances have been paid and that the Insurances are in full force and effect.

13.4. Acceptance and compliance

- 13.4.1. Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall relieve the Contractor of any other liabilities or obligations under this Agreement.
- 13.4.2. The Contractor shall take all reasonable steps to mitigate the effects of any risks or claims covered by this Clause (including without limitation minimising the amount of any costs and expenses which might result).

## 14. WARRANTIES AND UNDERTAKINGS

14.1. The Contractor warrants and represents that:

- 14.1.1. it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform this Agreement and that this Agreement is executed by duly authorised officers; and
- 14.1.2. as at the Commencement Date and on each anniversary, all information contained in its Tender for the Services remains true, accurate, and not misleading in any material respect save as may have been specifically disclosed in writing to the Employer before the execution of this Agreement or, as the case may be, before each anniversary.

14.2. The Contractor shall:

- 14.2.1. perform this Agreement in compliance with all applicable Law;
- 14.2.2. provide the Services through appropriately experienced, qualified and trained personnel, using all due skill, care and diligence;

- 14.2.3. discharge its obligations under this Agreement with all due skill, care and diligence including Industry Best Practice and (without limiting the generality of this Clause 14.2.3) in accordance with its own established internal procedures;
- 14.2.4. own or obtain and continue to own and maintain all Intellectual Property rights that are necessary for the performance of this Agreement and the provision of Services to and use by the Employer, who shall be granted a royalty-free licence to use such IP;
- 14.2.5. take all reasonable steps, in accordance with Industry Best Practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or Trojan Horse) into systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Employer;
- 14.2.6. take all reasonable measures to avoid any and all data loss and data corruption during the provision of the Services in accordance with Industry Best Practice;
- 14.2.7. take all reasonable measures to avoid the failure or reduced performance (in whole or in part) of the Services;
- 14.2.8. ensure that all legal, commercial and financial information provided by it to the Employer is complete and accurate.

## **15. ASSIGNMENT AND SUB-CONTRACTING**

- 15.1. This Agreement shall be binding on, and shall inure to the benefit of, each of the Contractor and the Employer and their successors and permitted transferees and assignees.
- 15.2. This Agreement is personal to the Contractor. The Contractor shall not assign, novate or otherwise dispose of this Agreement or any part of it (pursuant to corporate restructuring, business sale or otherwise) without the prior consent in writing of the Employer, subject to such other conditions as he shall think fit. This Clause shall not affect any right to subcontract pursuant to any Call-Off Contract.
- 15.3. The Employer may assign, novate or otherwise dispose of its rights and obligations under this Agreement.

## **16. GENERAL ASSISTANCE AND COOPERATION**

- 16.1. General assistance and co-operation and undertakings

Subject to Clause 16.2, each Party shall co-operate in good faith with the others to facilitate the proper performance of this Agreement and shall:

- 16.1.1. use all reasonable endeavours to avoid unnecessary disputes and claims against the other Party;

- 16.1.2. not interfere with the rights of the other Parties and their servants, agents, representatives, contractors or sub-contractors (of any tier) on their behalf in performing its obligations under this Agreement nor in any other way hinder or prevent such other Party or its servants, agents, representatives, contractors or sub-contractors (of any tier) on its behalf from performing those obligations; and
  - 16.1.3. assist the other Party (and its servants, agents, representatives, or Subcontractors (of any tier)) in performing those obligations so far as is reasonably practicable.
- 16.2. Nothing in Clause 16.2 shall:
  - 16.2.1. interfere with the right of each Party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;
  - 16.2.2. relieve a Party from any obligation under any indemnity contained in this Agreement or from any obligation to pay any debt due or payable under such documents; or
  - 16.2.3. fetter the discretion of the Employer in fulfilling its statutory functions.
- 16.3. Provision of information

Without limiting the Contractor's obligation to provide information pursuant to other terms of this Agreement, a Party (the Providing Party) shall supply to the other Party (the Requesting Party) such information as may from time to time be reasonably required by the Requesting Party in relation to the performance of the Requesting Party's obligations under this Agreement and which is within the Providing Party's care and control, subject to compliance by the Requesting Party with the provisions of Clause 22 (Confidentiality and Freedom of Information) and save to the extent that the Providing Party is restricted by Law or by any binding confidentiality obligation or undertaking from supplying such information.

## **17. GOVERNING LAW AND DISPUTE RESOLUTION**

- 17.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 17.2. The courts of England and Wales shall have exclusive jurisdiction to hear and settle any disputes which may arise in connection with this Agreement.
- 17.3. Each Party shall adopt a systematic approach to dispute resolution which recognises the purposes of this Agreement contained in Clause 2 and which:
  - 17.3.1. seeks solutions without apportioning blame;
  - 17.3.2. is based on mutually beneficial outcomes;
  - 17.3.3. treats the Contractor and the Employer (as the case may be) as equal parties in the dispute resolution process;

- 17.3.4. contains a mutual acceptance that adversarial attitudes waste time and money; and
- 17.3.5. relies on more and better discussion with less paperwork and more constructive correspondence.
- 17.4. If there is disagreement or dispute between the Parties in connection with this Agreement (a Dispute), the Parties shall use all reasonable endeavours to resolve the matter on an amicable basis. If a Party serves formal written notice on the other Party that a Dispute has arisen and the Parties are unable to resolve the Dispute within a period of 15 Business Days from the service of such notice, then the Dispute shall be referred to the respective Deputy Chief Executives, Service Directors or Managing Directors or Senior or Managing Partner (as the case may be) (or their nominees) of each Party who shall attempt to resolve the dispute within the next following 15 Business Days.
- 17.5. If the respective senior executives of the Parties are for any reason unable to resolve the Dispute within 15 Business Days, the Parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party shall serve notice in writing (ADR notice) to the other Party requesting a mediation and shall send a copy of the ADR notice to CEDR Solve. The Parties shall procure that the mediation starts no later than 15 Business Days after the date of the ADR notice. Unless otherwise agreed by the Parties, the place of mediation shall be nominated by the mediator.
- 17.6. Neither Party may commence any court proceedings in relation to a Dispute under this Agreement until both the procedure in Clause 17.5 is completed and until 10 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.
- 17.7. For the avoidance of doubt, any dispute relating to a Call-Off Contract shall be dealt with in accordance with the procedure contained therein, and not within this procedure.

## **18. STATUTORY REQUIREMENTS**

- 18.1. The Contractor shall, if requested, notify the Employer of all statutory provisions and approved safety standards applicable to the Services and their provision and shall be responsible for obtaining all licences, consents or permits required for the performance of this Agreement and each Call-Off Contract.
- 18.2. Health and Safety
  - 18.2.1. Without limitation, the Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and all Law and codes of practice relating to health and safety, which may apply in the performance of this Agreement and each Call-Off Contract.
  - 18.2.2. The Contractor shall, in the event of prosecution, issue of prohibition or improvement notice, immediately notify such event to the Employer.
- 18.3. The Contractor shall comply with all applicable environmental Law in relation to the Services. Additionally, where the Employer requires that Services are carried out in

accordance with its own environmental policies which are notified in writing to the Contractor before the execution of a Call-Off Contract, the Contractor shall use all reasonable endeavours to provide the Services in accordance with any those policies. The Contractor shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Employer.

- 18.4. The Contractor shall meet all reasonable requests the Employer for information evidencing compliance with the provisions of this Clause 18 by the Contractor.
- 18.5. The Contractor shall not victimise, harass or unlawfully discriminate either directly or indirectly because of or related to race, colour, ethnic or national origin, disability, matters arising from disability, sex or sexual orientation, pregnancy or maternity, gender reassignment, marital or civil partnership status, religion or belief, age, fixed term or part time status, trade union or non-trade union status and, without limitation, the Contractor shall not victimise, harass or unlawfully discriminate within the meaning of the Equality Act 2010 and shall not breach any equality clause or non-discrimination rule under the Equality Act 2010 nor breach the Protection of Harassment Act 1997; the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000; the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or other relevant Law.
- 18.6. The Contractor shall take all reasonable steps to secure the observance of the provisions of this Clause 18 by any Sub-Contractor.

## **19. COMPETITION LAW, CORRUPT GIFTS AND PAYMENTS**

- 19.1. The Contractor shall:
  - 19.1.1. comply with all applicable laws, statutes, regulations and codes relating to fraud, anti-bribery and anti- corruption including but not limited to the Bribery Act 2010 and Section 117 of the Local Government Act 1972;
  - 19.1.2. comply with the Employer's ethics, anti-bribery and anti-corruption policies;
  - 19.1.3. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with Clauses 13.1.1 and 19.1.2 above and shall enforce them where appropriate;
  - 19.1.4. promptly report to the Employer any request or demand for any undue financial or other advantage of any kind made or received by the Contractor in connection with the performance of this Agreement and each Call-Off Contract;
  - 19.1.5. following the Commencement Date, and annually thereafter, certify to the Employer in writing compliance with this Clause 19.1 by the Contractor and all persons associated with it. The Contractor shall provide such supporting evidence of compliance as the Employer may reasonably request;
  - 19.1.6. ensure that any person associated with the Contractor who is performing services in connection with this Agreement does so only on the basis of a

written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this Clause 19.1. The Contractor shall be responsible for the observance and performance by such persons of such terms, and shall be directly liable to the Employer for any breach by such persons of any such terms;

- 19.1.7. for the purpose of this Clause 19.1, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with Section 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act), Sections 6(5) and 6(6) of that Act and Section 8 of that Act respectively and for the purposes of this Clause 19.1, a person associated with the Contractor includes any Subcontractor;
- 19.1.8. not act in a manner, in relation to the performance of this Agreement or any Call-Off Contract, which the Employer reasonably considers to be inconsistent with the relevant UK Construction Industry Competition Law Code of Conduct or in breach of Chapters I and/or II of the Competition Act 1998 and/or the Treaty on the Functioning of the European Union (to the extent applicable), or any other competition Law provision or is otherwise anti-competitive.
- 19.2. Any breach of Clause 19 by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) in relation to this Agreement or any Call-Off Contract shall entitle the Employer to terminate this Agreement.
- 19.3. Any dispute, difference or question arising in respect of the interpretation of this Clause 19, the right of the Employer to terminate this Agreement shall be decided by the Employer acting reasonably, whose decision, in the absence of manifest error, shall be final and conclusive.

## **20. MODERN SLAVERY**

- 20.1. The Contractor undertakes that it shall comply with all requirements of the Modern Slavery Act 2015 and that it warrants and represents that neither the Contractor nor any of its employees, agents or sub-contractors has:
  - 20.1.1. committed an offence under the Modern Slavery Act 2015 (a 'MSA Offence'); or
  - 20.1.2. been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
  - 20.1.3. is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

it shall notify the Employer immediately in writing if it becomes aware or has reason to believe that it, or any of its employees, agents or sub-contractors have breached or potentially breached any of the Contractor's obligations under this Clause. Such notice shall set out full details of the circumstances concerning the breach or potential breach of the Contractor's obligations under this Clause 20.1.

- 20.2. For the avoidance of doubt, the requirements of this Clause are deemed to be obligations of the Contractor under this contract. Failure to comply with the requirements of this Clause shall therefore be deemed to be a substantial failure to comply with such obligations and/or the requirements of the contract.

## **21. NON-EXCLUSIVITY**

- 21.1. The Employer may at any time enter into separate contracts and/or framework arrangements with separate contractors for the provision of any or all services the same as or similar to the Services.
- 21.2. No guarantee or representation shall be deemed to have been made by the Employer in respect of the total quantities or values of the Services to be ordered the Employer, pursuant to this Agreement. Further, the Contractor acknowledges and agrees that it has not entered into this Agreement on the basis of any such guarantee or representation.
- 21.3. Nothing in this Agreement shall create an exclusive relationship between the Contractor and the Employer for the provision of services.

## **22. CONFIDENTIALITY AND FREEDOM OF INFORMATION**

- 22.1. A Party (the Recipient) receiving Confidential Information from the other Party (which, in the case of the Contractor, includes any information received from the Employer) (the Discloser) shall keep such Confidential Information secret and strictly confidential and shall not disclose it to any third party without the Discloser's prior written consent, provided that the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Agreement. The Contractor shall only use Confidential Information which is disclosed to it in order to comply with its obligations under this Agreement and/or for the performance of a Call-Off Contract.
- 22.2. The provisions of Clause 22.1 shall not apply to any Confidential Information which:-
- 22.2.1. is in or enters the public domain other than by breach of this Agreement or other act or omission of the Recipient;
  - 22.2.2. is obtained from a third party who is lawfully authorised to disclose such information;
  - 22.2.3. is required to be disclosed to ensure the compliance of the Employer with the FOIA or the Environmental Information Regulations;
  - 22.2.4. the Recipient is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Law;
  - 22.2.5. (provided that the information is subject to an equivalent confidentiality undertaking enforceable by the Discloser) the Recipient discloses to its professional advisors or insurers.
- 22.3. Where the Contractor considers that any information relating to it or in its possession should not be available for disclosure under the FOIA or the Environmental Information Regulations, it shall:

- 22.3.1. identify it specifically; and
- 22.3.2. explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.
- 22.4. Notwithstanding Clause 22.3, all decisions regarding disclosure of information following a request for information will be made at the discretion of the Employer. The Employer will seek to consult the Contractor in all cases regarding potential disclosure of information. The Contractor acknowledges that even where the Contractor has indicated that the information is commercially sensitive or should not be disclosed for another reason, the Employer may, having taken such comments into account still determine that it is a requirement that such information should be disclosed under law.
- 22.5. The Contractor shall transfer to the Employer any Request for Information it receives, as soon as practicable after receipt and in any event within 5 Business Days of receipt. The Contractor shall not respond directly to a Request for Information unless expressly authorised to do so by the Employer.
- 22.6. Where the Employer is managing a Request For Information, the Contractor shall provide all reasonable assistance to the Employer and shall respond, together with copies of any documentation requested, within 5 Business Days of any request for assistance.

## **23. PUBLICITY AND MARKETING**

- 23.1. The Contractor shall:
  - 23.1.1. not make any press announcements or externally focused communications in respect of this Agreement without the Employer's written consent prior to information being released/published (as further provided under Clause 22 above);
  - 23.1.2. send to the Employer details of any proposed press announcements or externally focused communications;
  - 23.1.3. procure that its employees, servants, agents and Subcontractors comply with the provisions of this Clause 23;
  - 23.1.4. properly manage all conflict of interest and issues related to Confidential Information related to its membership of other frameworks.
- 23.2. The Contractor shall not do anything which may damage or bring into disrepute the reputation of the Employer.
- 23.3. The Employer may (subject to Clause 22 above) publicise this Agreement, the Services provided under it and the framework arrangements at its sole discretion.
- 23.4. Each Party may provide to the other Party a form of logo and/or trade mark which the other Party may use in accordance with the other provisions of this Clause 23. Nothing in this Agreement shall grant to a Party any rights of ownership or use of such logo and/or trade mark save as specifically set out in this Agreement.

- 23.5. Without limiting the other provisions of this Clause 23, the Contractor shall adhere to the Employer's brand guidelines and messaging guide provided to the Contractor from time to time when referring to the Employer, either internally or externally.
- 23.6. The Contractor shall use its best endeavours to market this Agreement and the framework arrangements in accordance with the Employer's requirements and shall, without limitation, comply with the Employer's marketing and publicity protocols in relation to this Agreement, the Framework generally and the Services. This shall include marketing and publicity through social media.

## **24. PRECEDENCE OF DOCUMENTS**

Inconsistencies between any contract documents enforceable as between the Parties shall, unless otherwise set out in this Agreement, be resolved in the following order of precedence:

- 24.1. any individual Call-Off Contract; followed by
- 24.2. the main body of this Agreement; followed by
- 24.3. the Schedules to this Agreement.

## **25. MISCELLANEOUS**

### **25.1. Intellectual Property**

25.1.1. Without prejudice to any provisions in relation to Intellectual Property Rights set out in a Call-Off Contract which may grant the Employer greater rights, the Contractor hereby irrevocably licenses on the non-exclusive terms set out in Clause 25.2.1 to the Employer to use all rights it may have to use any IPR Data that might reasonably be required the Employer or a provider for the purposes of:

- 25.1.1.1. the Employer carrying out its duties or utilising its rights under this Agreement or a Call-Off Contract and/or any statutory functions, rights and/or obligations which the Employer may have;
- 25.1.1.2. following termination or expiry of this Agreement and/or a Call-Off Contract for whatever reason, the design or construction of a building, the operation, maintenance or improvement of any building and/or the carrying out of operations the same as, or similar to, that envisaged by a Call-Off Contract;

and in this Clause 'use' shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term 'the right to use' shall be construed accordingly.

### **25.2. The Contractor:**

25.2.1. shall grant to the Employer in question free of charge an irrevocable, non-exclusive and transferable licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights which are or become vested in the Contractor; and

- 25.2.2. shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in Clause 25.2.1 to the Employer;

in each case, for the purposes set out in Clause 25.1.

- 25.3. The Contractor shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement and which may be required for the performance of this Agreement, a Call-Off Contract, and remain vested throughout the term of this Agreement, in the Contractor to the extent required to enable the Contractor to comply with its obligations under this Clause 25.
- 25.4. Where a claim or proceeding is made or brought against the Employer which arises out of the infringement of any rights in or to any Intellectual Property or because the use of any materials, plant, machinery or equipment in connection with this Agreement or any Call-Off Contract infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Employer otherwise than in accordance with the terms of this Agreement, a Call-Off Contract, the Contractor shall indemnify and hold harmless each of the Employer at all times from and against all such claims and proceedings.
- 25.5. The Contractor acknowledges that it shall have no rights whatsoever to Employer Intellectual Property, whether created specifically in the course of providing Services or otherwise. Where the Employer creates any Intellectual Property rights, whether at the request the Contractor or otherwise, all rights to those Intellectual Property Rights shall, unless otherwise agreed in writing, vest in the Employer and any use of them by the Contractor shall be subject to a separate agreement.
- 25.6. Personal Data
- 25.6.1. The Contractor shall fully comply with all requirements imposed by the Data Protection Act 2018 with respect to the protection of Personal Data and otherwise.
- 25.6.2. The Contractor shall not disclose or allow access to any Personal Data provided by the Employer acquired by the Contractor during the performance of this Agreement other than in confidence to a person employed or engaged by the Contractor and their legal or financial advisers and only so far as is necessary for the purpose of the performance of this Agreement and/or any Call-Off Contract and/or to the extent required by Law.
- 25.6.3. The Contractor shall only undertake processing of Personal Data required for the purpose of the performance of this Agreement and/or any Call-Off Contract and shall only process Personal Data in accordance with the Employer's written instructions. The Contractor shall not transfer Personal Data to any country outside the European Economic Area.
- 25.6.4. The Contractor shall effect and maintain technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data, including taking reasonable steps to ensure the reliability of staff having access to the Personal Data.

- 25.6.5. To the extent that a further written agreement is required to deal with the Parties' respective obligations under the Data Protection Act 2018 (the DPA) including obligations in relation to the Contractor's status as the Employer 's data processor under the DPA (for example, the Contractor agreeing to act on the Employer's instructions and to follow the security obligations as placed on the Employer under the DPA), the Contractor shall enter into an appropriate agreement on such terms as the Employer reasonably requires.

25.7. Notices

- 25.7.1. All formal notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, leaving the same at:

If to the Contractor: ☒

If to the Employer: ☒

For the avoidance of doubt, notice given under this provision by the Contractor shall be deemed to have been given to each of the Employer.

- 25.7.2. Either Party shall notify the relevant email address to the other and may change its nominated address by prior notice to the other Party.

- 25.7.3. Notices given by post shall be effective upon the earlier of (i) actual receipt, and (where posted) (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notice given by email shall be effective when the sender receives a delivery receipt.

25.8. Amendments

This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of each Party.

25.9. Waiver

Any relaxation, forbearance, indulgence or delay (together indulgence) of a Party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that Party or any other person).

25.10. No agency

- 25.10.1. Nothing in this Agreement shall be construed as creating a partnership between any of the Employer and the Contractor.

- 25.10.2. Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of any of the Employer and the Contractor shall not hold itself out as having authority or power to bind the Employer in any way.

25.11. Entire agreement

Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

25.12. Severability

If any provision or part provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision or part provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions or part provision of this Agreement.

25.13. Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by the Parties shall constitute a full original of this Agreement for all purposes.

25.14. Costs and expenses

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

25.15. Rights of Third Parties

This Agreement shall not create any rights that shall be enforceable by anyone other than the Employer and/or the Contractor, except that the rights specified in the following Clauses may additionally be enforced by the Employer:

Clauses 5, 11, 18, 19, 20, 22, 23 and 25.

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.

25.16. Whistle blowing

The Contractor shall ensure that staff engaged by the Contractor in connection with any of the Services (including subcontractor staff where appropriate) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that the Contractor may have and the arrangements to be followed in the event of any staff having any concerns and wishing to make a disclosure pursuant to the Act and that the SCOSS Confidential Reporting on Structural Safety and CROSS Systems (to be found at [www.structural-safety.org](http://www.structural-safety.org)) are adhered to at all times.

25.17. Mitigation

Each of the Employer and the Contractor shall take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement and shall take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under this Agreement which would otherwise entitle that Party to relief under this Agreement.

25.18. Further assurance

Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE A**  
**Schedule of Amendments**