

DATED

(1) NOTTINGHAM CITY COUNCIL

and

(2) Miller Freeman & Sons (Nottm) Ltd

FRAMEWORK AGREEMENT

Mechanical Contracting Framework
CPU 5361

This Agreement is made on the [] day of [] 2025

Between

- (1) **Nottingham City Council of Loxley House, Station Street, Nottingham NG2 3NG (“the Client”); and**
- (2) **Miller Freeman & Sons (Nottm) Ltd (registration number 2222641) whose registered office is at 4 Parkyn Road, Daybrook, Nottingham, Nottinghamshire, NG5 6BG (“Contractor”);**

(together the “Parties” and individually a “Party”)

Whereas

- (A) The Client has invited tenders (‘ITT’) for acceptance on its framework for the provision of the Services (‘Framework’).
- (B) The Contractor has agreed to enter into this Agreement with the Client.
- (C) The Parties acknowledge that this Agreement does not provide any form of guarantee of work and that the Client has given no 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:

Agreement	this framework agreement, including its Schedules;
Awarded Lots	those Lots under which the Contractor may be awarded a Call-off Contract and as set out in the Framework Particulars
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Call-Off Contract	an agreement between the Contractor and the Client formed once that agreement has been executed in the form set out in Schedule 3;
Change in Control/Control	as defined in section 1124 of the Corporation Tax Act 2010
Change Request	a request to change any part of this agreement in accordance with Clause 10.4
Commencement Date	as set out in the Framework Particulars
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;

Consents	all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law and all necessary consents and agreements from any third parties (including, without limitation, any planning permission), needed to carry out the Services in accordance with this Agreement and each Call-Off Contract;
Contract Year	a period of 12 months beginning on the Commencement Date or each year during the operation of this Contract;
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI/2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party
Disclosure and Barring Service	the service established pursuant to the Protection of Freedoms Act 2012;
Client's Business Charter	the business charter a copy of which the Client has made available to the Contractor
Client Rebate	the sum to be payable in respect of all Call-Off Contracts awarded by the Client, being 1% of the value of all invoices in respect of such agreements, payable quarterly in arrear based on the value of invoices raised in that calendar quarter.
Environmental Information Regulations	the Environmental Information Regulations 2004;
Event of Default	has the meaning set out in Clause 15.1;
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 Manager	the person appointed by the Client to manage this Agreement as set out in the Framework Particulars or as otherwise notified from time to time;
Framework Particulars	Means the framework specific information as set out in Schedule 2;
Framework Provider	Means the Contractor and any other contractor appointed as framework providers under this Agreement

Good Industry Practice	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	any of the following: (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; (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; (c) the Contractor ceasing to carry on business; (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; (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; (f) The Client's reasonable anticipation that any one or more of the above is likely to occur in relation to the Contractor in the near future;
Insurances	as the context requires, all or any of the insurances required to be maintained by the Contractor pursuant to this Agreement including as a minimum those set out in the Framework Particulars;
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 <i>sui generis</i> rights of extraction relating to databases, trade secrets and other confidential information or know-how;
ITT	the Client's invitation to tender information as detailed in the Framework Particulars and all ITT documents are deemed incorporated into this Agreement as it attached as a Schedule.

Law	the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Contractor is bound to comply.
Lots	the lots contained within the Framework
Optional Clauses	the NEC4 Secondary Options (if applicable) referred to in the Call-Off Contract;
Performance Indicators	the Performance Indicators set out in Schedule 7;
Personal Data	has the meaning set out in the Data Protection Legislation;
Prices	the prices for Services calculated in accordance with Schedule 4;
Project	an agreed project to be carried out by a Contractor in accordance with and pursuant to a Call-Off Contract;
Project Manager	the manager appointed by the Client to supervise a Project from time to time;
Request for Information	any actual or purported request for information under the FOIA or the Environmental Information Regulations;
Services	those services and/or works set out in Schedule 2 and which are carried out by a Contractor in accordance with and pursuant to a Call-Off Contract; the Client in their absolute discretion shall determine whether Services requested fall under this definition of Services;
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 the Services;
Tender	the Contractor's response to the ITT, which is deemed incorporated into this Agreement as if attached as a Schedule;
Term	as set out in the Framework Particulars;
Value for Money	providing the Services in such a way that achieves a balance between quality and costs to meet the Client needs;
VAT	value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

1.2 As used in this Agreement:

- (a) the masculine includes the feminine and the neuter;
- (b) the singular includes the plural and vice versa; and

- (c) 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 “Schedules” are, unless otherwise provided or the context so necessitates, references to the clauses of and schedules to this Agreement. References to “Paragraphs” are, unless otherwise provided, references to paragraphs of the schedule in which the references are made.
- 1.6 Where the Contractor is providing Services only then any references to obligations regarding goods or the Supply of Goods Act shall not apply.
- 1.7 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this 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 Call-off Contract;
 - (b) the terms of this Agreement and its Schedules except the Tender or the Contractor’s submission under any competed call-off (“Supplemental Tender Submission”);
 - (c) any other document referred to in the clauses of the Contract; and
 - (d) Tender Submission and Supplemental Tender Submission.

2 Scope of Agreement

- 2.1 This Framework Agreement governs the relationship between the Client and the Contractor in respect of the provision of the Services.
- 2.2 The Client appoints the Contractor as a Framework Provider of the Services and subject to the provisions of this Agreement the Contractor shall be eligible to enter into Call-off Contracts with the Client during the Term.
- 2.3 The Contractor acknowledges that in entering this Agreement no form of exclusivity or volume guarantee has been granted by the Client and that the Client 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.
- 2.4 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.
- 2.5 The Contractor shall provide to the Client such information as is required to be provided in the Call-Off Contract together with such other information reasonably requested by the Client.
- 2.6 The Client 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;

- 2.7 The Contractor is not an agent unless expressly agreed by the Client in writing.
- 2.8 Nothing in this Agreement shall create an exclusive relationship between the Contractor and the Client for the provision of services.
- 2.9 Under this Agreement the Client and the Contractor shall work together to:
- (a) establish a partnering relationship to complete Projects pursuant to the Call-Off Contracts;
 - (b) ensure that the Client, the Contractor and other consultants shall act in a spirit of mutual trust and cooperation;
 - (c) set in place business and cultural processes to enable the Client and the Contractor to establish and agree mechanisms which achieve continuous improvements in time, quality and costs;
 - (d) commit to the achievement of continuous, measurable and measured improvement by agreeing quantitative and qualitative targets which:
 - (i) are specific;
 - (ii) are challenging;
 - (iii) add value; and
 - (iv) are sustainable and eliminate waste.

3 Term of this Agreement

- 3.1 This Agreement shall commence on the Commencement Date and shall terminate on the fourth 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 entered into prior to the termination of this Agreement).
- 3.2 Any Call-Off Contract entered into under this Agreement shall commence on the date its execution and shall expire no later than four (4) years after the expiry of this Agreement.
- 3.3 No Call-Off Contract shall be entered in to after termination of this Agreement.

4 The Services to be provided by the Contractor to the Client

- 4.1 The Contractor shall ensure that the Services are, pursuant to each Call-Off Contract, at all times performed:
- (a) in accordance with the requirements of this Agreement and any Call-off Contract.
 - (b) to a standard no lower than that of Good Industry Practice, and for the avoidance of doubt without prejudice to the Contractor's obligations under the Supply of Goods and Services Act 1982 with regards to the supply of goods and materials and the carrying out of physical works;
 - (c) in accordance with all relevant Law and codes of practice (including, where applicable, all government, local government and other public sector circulars, guidance, official requests or requirements for the time being in force, but only to the extent that the

same are published and publicly available or the existence and contents of them have been notified to the Contractor);

(d) in accordance with all Consents; and

(e) in a manner consistent with the Client (as the case may be) discharging its statutory duties and/or other functions undertaken by it to the extent these have been made known to the Contractor.

5 Call-Off Procedure

5.1 All Call-Off Contracts entered into under this Agreement shall be in accordance with the procedures set out in Schedule 3.

6 Call-Off Contracts

6.1 A binding Call-Off Contract for the provision of Services by the Contractor to the Client shall be created by the execution of a Call-Off Contract by both those parties in accordance with this Clause 6.

6.2 The Contractor shall use its best endeavours to ensure that it enters into a Call-Off Contract before it provides any Services.

6.3 Each Call-Off Contract shall be in the form set out in Schedule 5;

- (a) Other than the selection of Optional Clauses, no variation to the terms of the Template Call-Off Contracts shall be made without the agreement of the Client;
- (b) Selection of the Optional Clauses shall be at the Client's sole discretion;
- (c) The Client shall advise the Contractor of the Optional Clauses and any required Project specific amendments necessitated by the detail of any individual Project within a reasonable period of time of a formal request by the Contractor.

6.4 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 form annexed at Schedule 5.

6.5 The Contractor shall demonstrate Value for Money to the Client in relation to the delivery of Services, to the Client's reasonable satisfaction and in such a manner as the Client may require.

7 Pricing and Price Increases

7.1 Pricing for all Call-Off Contracts shall be in accordance with the prices and rates contained in Schedule 4 which shall be fixed for the first year from the commencement of this Agreement and thereafter shall only be uplifted in accordance with Schedule 4 and not otherwise.

7.2 All pricing shall be subject to the Client Rebate, such rebate to be paid quarterly in arrears.

8 Review and Management of the Agreement

8.1 The Parties shall, if the Client requires, hold review meetings during the Term, comprising:

- (a) senior representatives nominated by the Client from time to time;

- (b) senior representatives from the Contractor.

8.2 The review meeting shall be to:

- (a) review operating (including performance) issues in relation to the Contractor;
- (b) act as the primary review body for managing the Contractor's performance and the Contractor shall report on its performance under individual Call-Off Contracts in such format and at such frequencies as the Client may reasonably require from time to time;
- (c) serve as a forum for the open exchange of ideas so as to enable the Client, other stakeholders and the Contractor to discuss forthcoming Projects, to ensure an integrated co-ordinated approach to fulfilling such requirements and to update the Parties;
- (d) review the level of resources which the Contractor is making available under this Agreement;
- (e) review what support is needed from the Client;
- (f) review the operation of Performance Indicators and agree any improvements;
- (g) discuss such other matters as the Client determines from time to time.

8.3 The Contractor shall appoint a Contract Manager to act for the Contractor in providing the Services and shall in all cases notify the Project Manager not later than one month before the starting date of the Project the name of the Contract Manager.

8.4 Communications with the Contractor shall generally be undertaken by the Contract Manager. The Contractor shall ensure that the Contract Manager or his delegate is available to meet the Project Manager at all reasonable times during the Project.

8.5 Before the starting date of a Project, the Contractor shall notify the Client of the name of the Contractor member of staff responsible for health and safety. Where the site is owned or occupied by the Client, the Contractor shall ensure that his and his sub-contractor's employees comply with the Client's general health and safety policy and with the lawful requirements of the Project Manager.

8.6 The Contractor shall employ a competent person to supervise operations at the Site. The Contractor shall empower him to receive and act upon any instructions given by the Project Manager.

8.7 To support the effective delivery of Value for Money, the Contractor shall ensure supervision and management resources to monitor efficient resource usage, including operational and productive time, travel time, plant and machinery wastage levels and equipment usage and charges.

8.8 The Contractor shall maintain continuity of personnel, operatives and sub-contractors to carry out and complete operations.

9 Annual Review and Performance Management

9.1 The Parties shall hold a formal annual review of the operation of this Agreement and the Contractor's performance. This shall include:

- (a) performance against the Performance Indicators;
- (b) any under performance by the Contractor, including any identified from the performance and compliance audits;
- (c) the Contractor's health and safety record; and
- (d) demonstration by the Contractor of Value for Money, to the satisfaction of the Client, by reference to the provision of Services during that year compared to the provision of services of a similar nature, complexity, specification and size completed by other providers as adjusted for location and inflation and/or national figures produced by recognised national bodies.

9.2 The requirements in relation to the content and conduct of the review will be as directed by the Client.

9.3 The Contractor shall provide such information as the Client requires in the context of each annual review, including details of any prosecution for a breach of health and safety legislation or any prohibition notices or any improvement notices issued by either the Health and Safety Executive or any other public or statutory body at any time during the previous 12 month period in the UK.

9.4 The Contractor shall comply with all the Client's requirements in relation to any findings made by the Client in the context of the annual review.

9.5 Performance will be measured against the indicators set out in Schedule 7.

9.6 The Contractor shall provide the Client with the information required by the Client relating to the Performance Indicators before a Project commences, and thereafter monthly within the first five (5) Business Days of the next following month.

9.7 If the Contractor:

- (a) fails to meet the minimum required standard of performance of Performance Indicators and/or fails to provide the required Performance Indicators information in any required timescale;
- (b) has been prosecuted for breach of health and safety legislation and/or has been issued with a prohibition notice or an improvement notice; or
- (c) fails to provide a copy to the Client of the signed Call-Off Contracts within 5 Business Days of execution;

the Client may, without limiting its other rights and remedies, require the Contractor to attend a meeting within such timescale as the Client notifies to the Contractor to agree a rectification plan. In the case of breaches of obligations which are not capable of remedy or prosecution the rectification plan means a plan for mitigating or otherwise dealing with the consequences of the breach or prosecution. If the Contractor does not attend that meeting or the Parties cannot agree a rectification plan at that meeting, the Client may require the Contractor to comply with the rectification plan notified to the Contractor by the Client within the timescales set out in that rectification plan (such plan and timescales notified to the Contractor by the Client to be ones which could realistically be achieved by a competent contractor exercising its best endeavours).

9.8 Where the Contractor fails to comply with any rectification plan the Client may consider this to be an Event of Default.

10 Events of Default and Termination

10.1 An Event of Default by the Contractor means any of the following events or circumstances:

- (a) 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;
- (b) the Contractor failing to comply with a rectification plan in accordance with Clause 9 whether following the imposition of any special measures or otherwise;
- (c) the Contractor committing a material breach of its obligations under this Agreement which is not capable of remedy;
- (d) the Contractor ceasing to provide or procure the provision of all or a substantial part of the Services in accordance with this Agreement;
- (e) the Contractor persistently declines to provide Services unless the Client determines in its reasonable discretion, that the Contractor has an objectively justifiable reason for so declining;;
- (f) 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
- (g) an Insolvency Event occurs in relation to the Contractor; or
- (h) there is a Change In Control of the Contractor which the Client is unwilling to grant consent to; or
- (i) the making of an unauthorised material variation to the form of a Call-Off Contract.

10.2 Following an Event of Default, the Client may terminate this agreement with immediate effect on written notice to the Contractor.

10.3 Without prejudice to its other rights or remedies, if the Contractor has committed an Event of Default, the Client may suspend the Contractor for a defined time and on such terms as the Client requires and/or require the Contractor to carry out one or further rectification plans and the Client 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.

10.4 The Client shall have the right to terminate this Agreement or to terminate the provision of any part of the Agreement at any time by giving three months' written notice to the Contractor and all other Framework Providers.

11 Consequences of Termination

11.1 Notwithstanding the service of a notice to terminate this Agreement, the Contractor shall continue to fulfil its obligations under this Agreement until the date of expiry or termination of this Agreement or such other date as required by the Client.

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 Client 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 Client.
- 11.4 Other than data or information referred to in Clause 11.3, the Contractor shall retain and the Client may require access to all data or information arising from or out of this Agreement from the Contractor for 7 years after the date of termination of this Agreement.
- 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.
- 11.6 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.
- 11.7 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 (Definitions and interpretation), 11 (Consequences of Termination), 13 (Client's Limitation of Liability), 14 (Record Keeping), 15 (Insurance), 16 (Warranties and Undertakings), 17 (Assignment and Sub-contracting), 18 (General Assistance and Co-operation), 19 (Governing Law and Dispute Resolution), 22 (Confidentiality and Freedom of Information), 23 (Publicity and Marketing), 24 (Intellectual Property), 25 (Personal Data), 27 (Modern Slavery), 30 (No Agency), 35 (Rights of Third Parties).

12 Contractor Personnel

- 12.1 The Contractor will ensure that there are an adequate number of suitably skilled, experienced, qualified and competent employees providing each element of all Projects and shall not relocate key persons to other work without the approval of the Project Manager.
- 12.2 Before the starting date of an individual Project the Contractor may be required to submit to the Project Manager details of people who are to be employed by him and his sub-contractors in connection with each element of the Services. For the avoidance of doubt information will only be requested if it is considered necessary.
- 12.3 The details submitted at 12.2 shall include:
- (a) a list of names;
 - (b) details of job title, professional qualifications and copies of relevant competency certificates and / or registration documents (eg trade certification – NICEIC membership, Gas Safe Registration) for the operatives carrying out the operations;
 - (c) the capacities in which they are employed;
 - (d) any relevant criminal convictions of which the Contractor is aware about an employee, sub-contractor or employee of a sub-contractor;
 - (e) confirmation that a enhanced Disclosure and Barring Service check has been undertaken; and
 - (f) other information reasonably required by the Project Manager.

- 12.4 The Contractor shall not in complying with 12.2 and 12.3, breach the Data Protection Legislation or any other applicable law, but the Contractor shall seek all necessary consents to make the disclosures required by this Agreement.
- 12.5 The Contractor shall inform the Project Manager of any relevant criminal convictions of an employee, sub-contractor or employee of a sub-contractor used in providing the Services of which the Contractor becomes aware during the course of any Project and which may be relevant to the provision of the Services.
- 12.6 If the nature of the Services means that any employee, sub-contractor or any employee of a sub-contractor is exempt from the restriction on disclosing spent convictions under Regulation 4(2) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Contractor shall ensure that that employee or sub-contractor provides information in accordance with the ROA 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 about any convictions which would otherwise be deemed to be spent.
- 12.7 The trade certification referred to in 12.3(b) above shall include all relevant asbestos awareness training and appropriate health and safety training completed.
- 12.8 The Contractor shall ensure all personnel / operatives involved in providing the Services are fully inducted and trained on any Site or Project specific requirements, including any site rules and code of conduct as may be provided by the Client as well as the codes of practice, guidelines and best practice procedures, appropriate to the Services to be completed.
- 12.9 When providing the Services, the Contractor shall have measures in place to control potentially hazardous lone working to a legally acceptable level. Where the risk assessment shows that it is not possible for Services to be carried out safely by a lone worker, arrangements for back up are made.
- 12.10 Where the Contractor intends to sub-contract elements of the Services, it shall notify the Authority of the name, contact details and legal representatives of its proposed sub-contractors, including those further down the supply chain if required.
- 12.11 The Client reserves the right to verify whether any of the mandatory or discretionary grounds for exclusion in accordance with Regulation 57 of PCR2015 apply to proposed sub-contractors, should such grounds exist, the Client:
- (a) shall require that the Contractor replaces a sub-contractor in respect of which the verification has shown that there are compulsory grounds for exclusion; or
 - (b) may require that the Contractor replaces a sub-contractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.
- 12.12 The Contractor shall notify the Client of:
- (a) any changes to the information notified above during the course of the contract; and
 - (b) the name, contact details and legal representatives of any new sub-contractors which the main contractor subsequently involves in delivery of the contract.
- 12.13 The Client may require certain critical tasks as indicated in the Specification related to any particular Project to be carried out by the Contractor itself, rather than a Sub-Contractor.

13 Client's Limitation of Liability

- 13.1 This Clause 13 sets out the entire financial liability of the Client (including any liability for the acts or omissions of its employees, agents, consultants and sub-consultants) to the Contractor in respect of:
- (a) any breach of this Agreement;
 - (b) any failure, act or omissions by the Client in relation to the process relating to Call-Off Contracts;
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 13.3 Nothing in this Agreement limits or excludes the liability of the Client:
- (a) for death or personal injury resulting from the Client's negligence; or
 - (b) for any damage or liability incurred by the Contractor as a result of fraud or fraudulent misrepresentation by the Client.
- 13.4 Subject to Clause 13.3 and to the extent permitted by law, the Client shall not be liable for:
- (a) loss of profits; or
 - (b) loss of business; or
 - (c) depletion of goodwill and/or similar losses; or
 - (d) loss of anticipated savings; or
 - (e) loss of contract; or
 - (f) indirect loss; or
 - (g) consequential loss.
- 13.5 The Client's entire liability in a Contract Year to the Contractor in respect of breaches of this Agreement, any failure, act or omissions by the Client in relation to the Call-Off Contract process and representations, statements or tortuous acts or omissions (including negligence) arising under or in connection with this Agreement in that Contract Year shall be limited to £100,000.
- 13.6 Each of the Client and the Contractor shall at all times 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 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 and/or to claim compensation under it.

14 Records and open book accounting

14.1 The Contractor shall (and shall ensure that each Subcontractor shall) at all times:

- (a) maintain a full and accurate record of particulars of the costs of performing the Services both under this Agreement and any Call-Off Contract;
- (b) maintain a full and accurate record of time spent on the delivery of the Services under each Call-Off Contract;
- (c) keep books of account in accordance with best accountancy practice with respect to this Agreement and each Call-Off Contract showing in detail:
 - (i) administrative overheads;
 - (ii) payments to Subcontractors;
 - (iii) capital and revenue expenditure; and
 - (iv) such other items as the Client may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement or a Call-Off Contract;
 - (v) maintain a full record of all incidents relating to health, safety and security which occur in the delivery of the Services;
- (d) upon request by the Client, provide a written summary of any of the matters and/or other details which the Contractor is required to record in this Clause 14.1 in such form and detail as the Client may reasonably require to enable the Client to monitor the performance by the Contractor of its obligations under this Agreement and any Call-Off Contract.

14.2 The Contractor shall provide a copy of its management accounts once during each Contract Year when requested by the Client and at other times when requested by the Client as a result of disposals, re-organisations, mergers or acquisitions, and shall provide a copy of their annual audited accounts within one month of completion of the independent audit.

14.3 The Contractor shall permit (and shall procure that each of its Subcontractors shall permit) all records referred to in Clause 14.1 together with all records, data and other information in whatever format relating to this Agreement and/or any Call-Off Contract to be examined and copied from time to time by the Client's auditor and their representatives and other representatives of the Client who reasonably require access to the same.

14.4 the Client may from time to time itself undertake, or commission an independent, reputable organisation (experienced in the inspection and audit of building construction works service standards and costs audit), to audit the obligations within this Framework Agreement, individual Call-Off Contracts called off under this Framework Agreement and the Contractor's performance under these.

14.5 the Client shall notify the Contractor as to which Call-Off Contracts and Services are to be audited and (if not the Client) the name of the organisation selected by the Client to carry out the audit(s).

14.6 The Contractor shall co-operate fully with the auditor, which shall carry out a full open book audit of the Services' overall cost, quality, compliance, satisfaction and review of performance data including end-user feedback, and (if not the Client) provide its report(s) to the Client.

- 14.7 The records referred to in Clauses 14.1 and 14.2 shall be retained for a period of at least 12 years after the Contractor's obligations under this Agreement and/or a Call-Off Contract (if later) have come to an end.
- 14.8 All information referred to in this Clause 14 is subject to the obligations set out in Clause 2 (*Confidentiality*).

15 Insurance provisions

- 15.1 The Contractor shall procure at its own cost that the insurances set out in Schedule 1 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.
- 15.2 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.
- 15.3 The Contractor shall inform the Client as soon as practicable if it considers that such insurance ceases to be available at commercially reasonable rates or terms and the Client may, at its sole discretion, discuss alternative options.
- 15.4 The obligations in this Clause shall be separate from and in addition to any obligations required pursuant to a Call-Off Contract.
- 15.5 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.
- 15.6 The Contractor shall supply, on request, to the Client copies of all insurance policies (including all documents evidencing any amendments, extensions or variations to all such policies) or a letter from the Contractor's insurance broker confirming that such insurances are in place.
- 15.7 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.
- 15.8 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).

16 Warranties and undertakings

- 16.1 The Contractor warrants and represents that:
- (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of any parent or holding company) to enter into and to perform this Agreement and that this Agreement is executed by duly authorised officers;

- (b) 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 Client before the execution of this Agreement or, as the case may be, before each anniversary.

16.2 The Contractor shall :

- (a) perform this Agreement in compliance with all applicable Law;
- (b) provide the Services pursuant to each Call-Off Contract through appropriately experienced, qualified and trained personnel, using a standard not lower than that of Good Industry Practice and for the avoidance of doubt without prejudice to the Contractor's obligations under the Supply of Goods and Services Act 1982 with regards to the supply of goods and materials and the carrying out of physical works;
- (c) discharge its obligations under this Agreement with all due skill, care and diligence including Good Industry Practice and (without limiting the generality of this Clause 16.2(c)) in accordance with its own established internal procedures;
- (d) 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;
- (e) take all reasonable steps, in accordance with Good Industry 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);
- (f) take all reasonable measures to avoid any and all data loss and data corruption during the provision of the Services in accordance with Good Industry Practice;
- (g) take all reasonable measures to avoid the failure or reduced performance (in whole or in part) of the Services under each Call-Off Contract;
- (h) ensure that all legal, commercial and financial information provided by it to the Client is complete and accurate.

17 Assignment and sub-contracting

- 17.1 This Agreement shall be binding on, and shall inure to the benefit of, each of the Contractor and the Client and its successors and permitted transferees and assignees.
- 17.2 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 a senior authorised representative of the Client, 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.
- 17.3 the Client may assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to a Contracting Authority (as defined in the Public Contracts Regulations 2015) or to any Client controlled Company.

- 17.4 Subject to the other provisions of this Clause 17, any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not affect the validity of this Agreement. In such circumstances, this Agreement shall subject to the written consent of the Contractor bind and inure to the benefit of any successor body to the Client.

18 General assistance and cooperation

- 18.1 Subject to Clause 18.2, each Party shall co-operate in good faith with the other to facilitate the proper performance of this Agreement and shall:

- (a) use all reasonable endeavours to avoid unnecessary disputes and claims against the other Party;
- (b) not interfere with the rights of the other Party and its servants, agents, representatives, contractors or sub-contractors on its 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 on its behalf from performing those obligations; and
- (c) assist the other Party (and its servants, agents, representatives, or Subcontractors) in performing those obligations so far as is reasonably practicable.

- 18.2 Nothing in Clause 18.1 shall:

- (a) 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;
- (b) oblige either Party to incur any additional cost or expense or suffer any loss of profit in excess of that required by its proper performance of its obligations under this Agreement;
- (c) 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
- (d) fetter the discretion of the Client in fulfilling its statutory functions.

- 18.3 Without limiting the Contractor's obligation to provide information pursuant to other terms of this Agreement, a Party (the **Providing Party**) shall (provided that fulfilling its obligations under this Clause 18.3 does not require it to commit expenditure or time resources of its employees over a level which it reasonably considers to be material) 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 222 (*Confidentiality*) 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.

19 Governing Law and Dispute resolution

- 19.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 19.2 The courts of England and Wales shall have exclusive jurisdiction to hear and settle any disputes which may arise in connection with this Agreement. For the avoidance of doubt any dispute arising under a Call-off Contract shall be dealt with under the provisions of the Call-off Contract.
- 19.3 Each Party shall adopt a systematic approach to dispute resolution which recognises the purposes of this Agreement contained in Clause 2 and which:
- (a) seeks solutions without apportioning blame;
 - (b) is based on mutually beneficial outcomes;
 - (c) treats the Contractor and the Client (as the case may be) as equal parties in the dispute resolution process;
 - (d) contains a mutual acceptance that adversarial attitudes waste time and money; and
 - (e) relies on more and better discussion with less paperwork and more constructive correspondence.
- 19.4 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 Chief Executives 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.
- 19.5 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.
- 19.6 Neither Party may commence any court proceedings in relation to a Dispute until both the procedure in Clause 19.5 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.

20 Statutory Requirements

- 20.1 The Contractor shall, if requested, notify the Client 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.
- 20.2 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.

- 20.3 The Contractor shall comply with all applicable environmental Law in relation to the Services. Additionally, where 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 pursuant to each Call-Off Contract 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 Client.
- 20.4 The Contractor shall meet all reasonable requests for information evidencing compliance with the provisions of this Clause 20 by the Contractor.
- 20.5 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.
- 20.6 The Contractor shall ensure that all its employees are registered, where appropriate, pursuant to the Construction Skills Certification Scheme (or any replacement scheme).
- 20.7 The Contractor shall ensure that it and all its employees comply with such other codes of conduct or schemes as the Client shall require from time to time.
- 20.8 The Contractor shall take all reasonable steps to secure the observance of the provisions of this Clause 00 by any Sub-Contractor.

21 Bribery and Corruption

21.1 The Contractor shall :

- (a) 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 (**Relevant Requirements**);
- (b) comply with the Client's ethics, anti-bribery and anti-corruption policies (**Relevant Policies**);
- (c) 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 the Relevant Requirements and the Relevant Policies and shall enforce them where appropriate;
- (d) promptly report to the Client 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;
- (e) within 2 months of the date of this Agreement, and annually thereafter, certify to the Client in writing, compliance with this Clause 21.1 by the Contractor and

all persons associated with it. The Contractor shall provide such supporting evidence of compliance as the Client may reasonably request;

- (f) 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 21.1 (**Relevant Terms**). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Client for any breach by such persons of any of the Relevant Terms;
- (g) For the purpose of this Clause 21.1, 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 21.1, a person associated with the Contractor includes any Subcontractor;
- (h) not act in a manner, in relation to the performance of this Agreement or any Call-Off Contract, which the Client reasonably considers to be inconsistent with the relevant UK Construction Industry Competition Law Code of or any other competition Law provision or is otherwise anti-competitive.

21.2 Any breach of Clause 21 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 Client to terminate this Agreement.

21.3 Any dispute, difference or question arising in respect of the interpretation of this Clause 21, the right of the Client to terminate this Agreement shall be decided by the Client acting reasonably, whose decision, in the absence of manifest error, shall be final and conclusive.

21.4 Where there has been a finding against the Client in respect of anti bribery and anti corruption the Contractor shall be entitled to terminate this Agreement.

22 Confidentiality and Freedom of Information

22.1 A Party (the **Recipient**) receiving Confidential Information from the other Party (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:

- (a) is in or enters the public domain other than by breach of this Agreement or other act or omission of the Recipient;
- (b) is obtained from a third party who is lawfully authorised to disclose such information;
- (c) is required to be disclosed to ensure the compliance of the Client with the FOIA or the Environmental Information Regulations;

- (d) 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;
- (e) (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:

- (a) identify it specifically; and
- (b) 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 sole discretion of the Client. The Contractor acknowledges that, even where the Contractor has indicated that information is commercially sensitive, the Client may be required to disclose it under Law, with or without consulting the Contractor and the Client shall be required to consult the Contractor prior to disclosure.

22.5 The Contractor shall transfer to the Client 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 Client.

22.6 Where the Client is managing a Request For Information, the Contractor shall provide all reasonable assistance to the Client 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 not make any press announcements or externally focused communications in respect of this Agreement without the Client's written consent prior to information being released/published. The Contractor shall send to the Framework Manager details of any proposed press announcements or externally focused communications. The Contractor shall procure that its employees, servants, agents and Subcontractors comply with the provisions of this Clause 23.

23.2 The Contractor shall not do anything which may damage the reputation of the Client or bring the Client into disrepute.

23.3 the Client may 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 Client's brand guidelines and messaging guide provided to the Contractor from time to time when referring to the Client, 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 Client's requirements and shall, without limitation, comply with the Client's marketing and publicity protocols in relation to this Agreement, the

framework arrangement and the Services. This shall include marketing and publicity through social media.

24 Intellectual Property

- 24.1 Copyright and all Intellectual Property Rights subsisting over the documents which are vested in the Contractor will remain vested in the Contractor but the Contractor hereby grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Client with effect from the date of this Agreement (or in the case of documents not yet in existence with effect from the creation of them) an irrevocable fully paid up royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Contractor obligations or termination of its employment under this Agreement or any dispute under this Agreement) to use and reproduce all documents and the designs contained in them in built or physical form for any purpose whatsoever connected with any work done (including but without limitation the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the said work). Such licence will carry the right to grant sub-licences and will be transferable to third parties. The Contractor is not liable for any use by the Client of any of the documents for any purpose other than that for which the same were prepared by or on behalf of the Contractor.
- 24.2 On the Client's reasonable request at any time and following reasonable prior written notice, the Contractor gives the Client or those authorised by it access to the documents and provides copies of them (including copy negatives and/or CAD disks or other approved electronic versions) at the Client's expense.

25 Personal Data

- 25.1 The Parties shall at all times comply with their obligations under the Data Protection Legislation.
- 25.2 With regard to the management and operation of this Agreement each Party shall be a Data Controller. Where any Project requires the Contractor to process Personal Data on behalf of the Client, such processing shall be upon the terms as set out in the Call-off Contract.

26 Notices

- 26.1 All 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 email, first class post or by hand, leaving the same at the address set out in the Framework Particulars
- 26.2 Either Party shall notify the relevant email address to the other and may change its nominated address by prior notice to the other Party.
- 26.3 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (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.
- 26.4 For the avoidance of doubt, any notice giving termination shall not be deemed served if by e-mail.

27 Modern Slavery

- 27.1 The Contractor is under a duty to co-operate with the Client in accordance with the Modern Slavery Act 2015.

- 27.2 If the Contractor's turnover is above the threshold, the Contractor shall comply with its duties under the Modern Slavery Act 2015 as to disclosure and transparency.
- 27.3 Where practical, the Contractor shall make a report to the Client in respect of any incidents or concerns of modern slavery as soon as there are reasonable grounds to suspect them, in order to assist the Client to comply with its duties under the Modern Slavery Act 2015.

28 Amendments

- 28.1 This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of each Party.
- 28.2 Any variation to this Agreement shall apply to each and every Framework Provider for the Awarded Lot.

29 Waiver

- 29.1 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).

30 No agency

- 30.1 Nothing in this Agreement shall be construed as creating a partnership between the Client and the Contractor.
- 30.2 Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of the Client and the Contractor shall not hold itself out as having authority or power to bind the Client in any way.

31 Entire agreement

- 31.1 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.

32 Severability

- 32.1 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.

33 Counterparts

- 33.1 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.
- 33.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each

party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

34 Costs and expenses

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

35 Rights of Third Parties

35.1 This Agreement shall not create any rights that shall be enforceable by anyone other than the Client and/or the Contractor and the rights granted by the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

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

**THE COMMON SEAL OF
NOTTINGHAM CITY COUNCIL**

was affixed in the presence of:

.....
Authorised Representative

Executed as a deed for and on behalf of)
Miller Freeman & Sons (Nottm) Ltd)
by)

.....
Director

.....
Full name (BLOCK CAPITALS)

.....
Position/title

.....
Director/ Secretary

.....
Full name (BLOCK CAPITALS)

.....
Position/title

SCHEDULE 1

FRAMEWORK PARTICULARS

TENDER DETAILS	CPU Ref: 5361 Tender Ref: Mechanical Contracting Framework Published Date: 28.05.2025 Close Date: 09.07.2025 Award Date: 29.08.2025
OVERVIEW OF SERVICES	This framework is to deliver works in respect of Mechanical works across Nottingham City Council's boundaries, as Contractor and Principal Designer/Principal Contractor when required to do so as outlined in the tender documents.
LOTS:	<i>n/a</i>
RANK	<i>Second</i>
COMMENCEMENT DATE:	To be confirmed with the client
TERM – INITIAL TERM + EXTENSIONS IF APPLICABLE	Up to 4 Years (no extensions permitted)
INSURANCE REQUIREMENTS	Minimum levels required: Public Liability = £20,000,000 (Twenty million pounds) on an each and every claim basis Employer's Liability = £5,000,000 (five million pounds) Professional Indemnity =£1,000,000 (One million pounds) on an each and every claim basis Product Liability =£5,000,000 (Five million pounds) Contractor's All Risks = <u>For the Full Value of works, material and plant for each specific job</u>
FRAMEWORK MANAGER	Property Maintenance Manager
CONTRACTOR REPRESENTATIVE	
COUNCIL DETAILS FOR SERVING ANY NOTICES	
CONTRACTOR DETAILS FOR	

SERVING ANY NOTICES	
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SCHEDULE 2

FRAMEWORK SPECIFICATION

**Building Services &
Facilities Maintenance
Service Information**

for

**Mechanical Contracting Framework
CPU 5361**



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Definitions

Affected Property List	The list of properties where the Service is to be delivered.
Building Fabric	The structural elements of a building and associated components e.g. roof, walls, floors, windows, doors.
Building Services	All systems, energy supplies and associated plant inside a building that makes it functional, comfortable, and safe to occupy.
Client	Nottingham City Council or their appointed representatives. Includes references to Employer in NEC3 contracts.
CAFM System	The asset management system that the Client and Contractor use to record and communicate information.
Contractor	The Contractor who is employed by the Client to provide the Service.
Engineer	The Contractor's qualified staff member who will carry out works on site.
Minor Works	Works concerned with the replacement or upgrading of existing plant, equipment, building fabric elements or components and new installations.
Normal Working Hours	Monday to Friday between the hours of 08:00 and 18:00 inclusive, excluding statutory Bank Holidays.
Operative	The Contractor's qualified staff member who will carry out works on site.
Order	A Task Order, Work Order, or Call-Off Contract, issued by the Client.
Out of Hours	Any time that is not Normal Working Hours
Reactive Maintenance	Day to day repairs undertaken at properties to avoid health and safety incidents, building service failure, or that facilitates the continuation of service delivery from a property. This may cover repairs to all aspects of building services engineering as well as the building fabric.
Remedial Works	Works identified during a maintenance visit that the Contractor deems necessary to enable the visit to be successfully completed or works recommended to keep building services compliant with relevant standards and legislation.
Service	The Service set out in this Schedule
Schedule	An individual aspect of the building services where maintenance activities are undertaken e.g. Fire Alarm, Air Conditioning, Intruder Alarm.
Site	The location at which the works will be undertaken, as advised by the Client
Subcontractor	An organisation or individual engaged by the Contractor to carry out works or services for the Client.
Task	An individual service, piece of work, or series of works or services, as set out in a Maintenance Programme, Order, or other instruction issued by the Client.

Introduction

Introduction to Document

The purpose of this document is to provide the Contractor with information regarding the Client's requirements for the Service and the provision and delivery of the Service.

This document forms part of a set of documents and must be read in conjunction with the Contract, the Service Information, and the other Appendices.

All works shall be conducted in accordance with the Client's scope and all requirements contained within the Contract documents.

Background

Nottingham City Council (the 'Authority' or '*Employer*') is seeking tenders from suitably experienced and qualified entities (the 'Tenderer') for inclusion on a framework for the provision of Mechanical Contractors for Supply and Install.

Information Provided

The following is the list of documents that apply to this Service. The Contractor must ensure they have read and understood all information provided and apply all relevant provisions when Providing the Service.

- The Contract
- The Service Information
- Appendix 2 Generic Works Information
- Appendix 3 Electrical Requirements
- Appendix 4 Mechanical Requirements
- Appendix 5 Fire Policy
- Appendix 6 Asbestos Policy
- Appendix 7 Payment Process
- Appendix 8 NCC Construction Charter

Order of Precedence

In the case of conflicting instructions the following order of precedence shall apply:

- i) The Terms of the Contract
- ii) Instructions issued as part of a Task Order, Work Order, or Call-Off Contract.
- iii) The Technical Information
- iv) The Service Information
- v) The Generic Works Information
- vi) The Appendices

Part 1: Overview Of The Service

1 Scope of the Service

- 1.1 The Works covered by this Service will be Mechanical Contracting Supply & Installation
- 1.2 The Service consists of:
 - High Quality New Mechanical Installations
 - Project Design, Manage, Test and Commission Mechanical Works.
 - Reactive maintenance including Remedial repairs, where applicable
- 1.3 The Contractor will provide the Service:
 - during Normal Working Hours
 - outside of Normal Working Hours
 - with 24-hours coverage 365 days a year

2 Location of the Service

- 2.1 The Sites will be:
 - any Nottingham City Council owned property within the Nottinghamshire District Council boundaries

3 Registration / Certifications

- 3.1 The Contractor shall be registrations, accreditations, or certifications, as follows, throughout the term of the Contract:
 - Gas Safe (installation and Use) Regulations 1998
 - CHAS (Contractors Health and Safety Assessment Scheme)
 - ISO 9001

4 Standards/Codes of Practice

- 4.1 The contractor and their operatives shall at all times work in accordance with the following British Standards and Regulations:
 - Construction Design and Management Regulations 2015
 - Building Regulations (Part J)
 - BS7671:2018+A2:2022 Requirements for Electrical Installations. IET Wiring Regulations
 - Manufacturers Instructions (MI)
 - Nottingham City Council Mechanical Standards: *App04_Mechanical Requirements v6*
- 4.2 The Contractor shall make all certifications and associated works digitalised, these digital records will be updated on the CAFM System.

Part 2: Providing the Service

5 Providing the Service

- 5.1 The Contractor shall provide the Service in accordance with the information set out in this Schedule and the Appendices to it.
- 5.2 The Contractor shall provide the Service in a cost-effective manner, whilst ensuring that the appropriate standards are achieved and maintained.
- 5.3 The Contractor must demonstrate value for money to the Client in providing the Service within initial proposals and via annual reviews throughout the duration of the Service.
- 5.4 The Contractor shall carry out all works with minimal disruption to building occupants, services users, members of the public, etc.

6 Continuous Improvement

- 6.1 The Contractor shall continuously seek to identify efficiencies and improvements and to reduce any occurrences of poor performance over the life of the framework; the Client will work with the Contractor to identify and prioritise any areas of improvement so identified.
- 6.2 Proposals should be presented by the Contractor to the Client demonstrating:
 - Enhancements and benefits to the service
 - Cost implications for maintenance and operation
 - Programmes for implementation
 - Contractor and Client resource
- 6.3 The Contractor shall advise the Client of cost savings that could be realised through changes to specifications, frequencies, and standards. Any advice or recommendations given must ensure that the Client maintains compliance with all relevant legislation and statutory duties.

7 Competency

- 7.1 The Contractor shall ensure all employees are appropriately qualified to undertake the works they are carrying out.
- 7.2 Competency levels of all operatives shall kept at a level to ensure knowledge and experience can be demonstrated to meet relevant standards and regulatory bodies requirements and in accordance to required technical specifications.
- 7.3 Prior to any works commencing the Contractor will ensure its workforce including any sub-contractors are qualified and competent in the relevant disciplines to undertake the works required. A copy of qualifications shall be passed to Client prior to commencement of a Task.
- 7.4 Workmanship and materials shall be in accordance with appropriate British Standards and as defined by the technical specifications, manufacturer's recommendations and/ or industry best practice guidance.

8 Health & Safety

- 8.1 The contractor shall undertake and record risk assessments for all tasks required to carry out the works and submit them electronically to the client prior to commencement of a Task. The Contractor shall review them with the Client Agent annually or where there is a change to legislations that affects the assessment.
- 8.2 The Contractor shall allow for all necessary additional Health and Safety training of their employees to ensure that all personnel attending site are fully familiar with safe working practices.

9 The Construction (Design and Management) Regulations 2015

- 9.1 Works will be executed strictly in accordance with the Construction (Design and Management) Regulations.

- 9.2 The Contractor shall ensure they can demonstrate knowledge, experience and competencies required to undertake and fulfil CDM duties or demonstrate the management structure to enable the appointment of relevant specialist to CDM duties with full disclosure of their competencies.
- 9.3 The Contractor will provide documentation relating to CDM Regulations as required by the Client and shall be relevant to the roles being carried out.
- 9.4 The Contractor will allocate adequate resources for health and safety to enable it to fulfil their duties under CDM2015.
- 9.5 Due to the nature of the Tender and specific skills required for the delivery of high quality Mechanical Installations. The successful contractor will be required to act as Principle Designer/Principle Contractor when requested to do so.

10 Safeguarding

- 10.1 The Contractor must give particular consideration to how they deliver the Service at properties occupied or used by:
- Children
 - Vulnerable people
 - People with disabilities
 - Elderly people

11 Disclosure Barring Service (DBS) Checks

- 11.1 All Contractors and Subcontractors who are dispatched to areas where they may have contact with children and vulnerable adults must be in receipt of an enhanced level disclosure or barring check in accordance with current legislation and guidance.
- 11.2 The Contractor shall be responsible for ensuring they and their operatives follow Safeguarding Protocol as part of the Client's Safeguarding Procedure. The Contractor shall make themselves and their operatives aware of the policy prior to commencing any works that may require contact with children and/or vulnerable adults.

12 Licences, Permits and Trade Organisations

- 12.1 The Contractor must hold and maintain throughout the period of the Service all licences and permits lawfully required for the provision of the service. Electronic copies of such licenses shall be required together with details of membership of any applicable trade organisation at mobilisation.

13 Guarantees & Warranties

- 13.1 As part of all installations, a standard 12-month warranty is required on all replacement equipment. The Client will be responsible for specifying any additional warranty requirements and the process for repair, service and maintenance after the warranty period has expired.

Part 3: Supply and Installation

14 Installation

14.1 The contractor shall be current and competent in all disciplines for Mechanical Installations within the scope of these works.

14.2 The contractor shall as a minimum when delivering a Mechanical Project or similar demonstrate the following:

14.2.1 Scope of Works for the Project to include:

- i) Project Overview
- ii) Tasks and responsibilities
- iii) Mechanical System Proposed
 - vi.i.i) Heating System/Ventilation System/Plumbing System
 - vi.i.ii) Technical Specification: Detailed drawings of project
- iv) Equipment Installed
 - vi.i.i) Heating Appliance(s)
 - vi.i.ii) Pumps & Motors
 - vi.i.iii) Tanks & Vessels
 - vi.i.iv) Electrical Components
- v) Controls & Instruments
 - vi.i.i) Control Systems
 - vi.i.ii) Building Management System (BMS)
- vi) Testing & Commissioning
 - vi.i.i) System Testing
 - vi.i.ii) Commissioning
 - vi.i.iii) Documentation & Certification
- vii) Health & Safety
 - vi.i.i) Risk Assessments
 - vi.i.ii) Method Statements
 - vi.i.iii) Compliance
- viii) Maintenance & Support
 - vi.i.i) Maintenance Plan
 - vi.i.ii) Training
 - vi.i.iii) Warranties

14.2.2 GANTT chart or similar

14.2.3 Quote for Project, this will include but not be limited to the following:

- i) Total Cost and Breakdown: Labour, Materials and overheads
- ii) Materials and Appliances to be installed
- iii) Digital O&M's (Paper if requested by the stakeholder)
- iv) Certification and Warranties

14.2.4 Quality Control Measures: Procedures for monitoring and maintaining quality in the delivery of the Project



14.2.5 Sub-Contractors: All sub-contractors must have full liability insurance against the project

Part 4: Reactive Maintenance

15 Reactive Repairs

- 15.1 The Contractor will undertake reactive maintenance during working hours from the starting date of the contract and in accordance with response times set out below.
- 15.2 The Client will instruct the Contractor to undertake reactive maintenance repairs by issuing an order via CAFM System.

16 Emergency / Make Safe

- 16.1 Emergency / make safe works will be instructed by the Client by CAFM System task order or by telephone if out of normal working hours.

17 Reactive Maintenance Mandate Limits

- 17.1 The Contractor may undertake repairs (fully inclusive of travel, labour and materials, OH&P) up to the values indicated in the table below:

Activity	Financial Limit
Per single order	£ 1,500

- 17.2 In the event that a reactive repair is likely to exceed these limits, the Contractor shall notify the Client whilst on site and seek authorisation to undertake the repairs, any repair not authorised that is over the mandate will be completed at the contractors expense.
- 17.3 In the event that a reactive maintenance repair is likely to exceed this limit and needs immediate completion to remove the presence of a health and safety risk or ensure continued occupation of the property, the Contractor shall notify the Clients Agent whilst on site and seek authorisation to undertake the repairs. If authorised, the Client will increase the order value accordingly.
- 17.4 In all other instances where reactive maintenance repairs are likely to exceed this limit, the Contractor shall notify the Client by raising a business case in CAFM System within five days of attending site.
- 17.5 The Client will give the Contractor authorisation to proceed, or otherwise, with the works identified, by approving or rejecting the business case accordingly.

18 Reactive Maintenance Response Times

- 18.1 The Contractor will be required to undertake reactive maintenance during working hours from the starting date of the contract and in accordance with the response times detailed below:

Category		Timescale
1	Critical	One hour response / four-hour completion
2	Urgent	One day response / three-day completion
3	Standard	Two-day response / five-day completion
4	Routine	Five-day response / ten-day completion
5	Pre-Arranged	Ten-day response / thirty-day completion

- 18.2 Upon receiving an instruction, if the Contractor is aware they will not be able to meet a response time, they shall advise the Client Contract Manager immediately.
- 18.3 Should the Contractor experience circumstance that will delay attendance to site, they shall notify the site contact of the expected arrival time.

19 Reactive Maintenance Procedure

- 19.1 Once in receipt of an order the Contractor shall undertake the following:
- Arrange attendance to site with the building staff within the response times specified in this Part.

- Fix the issue if within the agreed mandate value.
- Otherwise, complete the repair within the routine quoted response and completion timescales.

- 19.2 The Contractor is required to make the property, service, or equipment safe, establish the cause of the fault, and undertake suitable repairs or works whilst in attendance.
- 19.3 The Contractor is required to adopt a proactive and solution-based approach when undertaking repairs to ensure the fault is rectified at the first time of asking whenever possible.
- 19.4 Should the Contractor need to leave site to collect parts or materials, they shall advise the responsible person on site stating when they shall return to complete the works.
- 19.5 Should any repairs require re-attendance for further investigations, the Contractor shall notify both the responsible person on site and Client of the nature of the fault and the time and date they shall return.
- 19.6 In the event that the Contractor needs to order parts to complete a repair, they shall notify both the responsible person on site and Client of this requirement and provide an estimated timeframe for delivery.

20 Equipment Beyond Repair

- 20.1 If the Contractor discovers that services, plant, or equipment are beyond economical repair, they shall make the service or equipment safe and notify the responsible person on site and the Client of actions taken.
- 20.2 The Contractor will provide a quote for undertaking a like for like replacement or recommend alternative solutions to reinstate the service, plant, or equipment.
- 20.3 Recommendations from the Contractor to undertake the installation of new equipment shall be reported to the Client within five working days of completion of the visit.
- 20.4 The Client will assess any recommendations and issue a task order authorising such works as necessary.
- 20.5 The Contractor shall notify the Client of any repairs that need the attendance of a different tradesman or Contractor to assist with or undertake works necessary to rectify the fault.

21 Remedial Work

- 21.1 If urgent Remedial Work is required during a Reactive Maintenance visit to satisfy any of the conditions detailed below, the Contractor may undertake such work up to the mandate value of £500 (inclusive of labour and materials).
- a. To enable completion of the Reactive Maintenance activity
 - b. To maintain statutory compliance
 - c. To ensure continued use of the equipment or occupation of the property
 - d. To mitigate the presence of any health and safety risk to occupants
- 21.2 In the event that urgent Remedial Work is likely to exceed this limit, the Contractor shall notify the Client whilst on site and seek authorisation to do so or advice as to how to proceed.
- 21.3 The Contractor is not permitted to undertake any Remedial Works at school sites without prior written consent from the responsible person on site. If approval is granted, the cost of the Remedial Work must be claimed directly from the school site, not the Client. In the event that the Contractor does not receive payment from the school, the Client should be notified in order for escalation of payment for works undertaken.
- 21.4 The Contractor shall add a record of all Remedial Work undertaken during the course of a Reactive Maintenance visit to CAFM System within five days of completing the work. The Client will issue confirmation orders to the Contractor for the works undertaken.

- 21.5 The Contractor will notify the Client of any non-urgent Remedial Work which is deemed to be required or recommended by adding a record of the work to CAFM System within five days of completing the Reactive Maintenance visit. The Client will review these records and issue an order to the Contractor as necessary.

22 Post Completion & Certification

- 22.1 The Contractor shall submit correctly completed documentation after all Reactive Maintenance visits as detailed in this document.
- 22.2 The Contractor shall ensure that all documents are completed and uploaded on to CAFM System within **2 working days** of the service, and in any event before requests for payment are made.
- 22.3 Application for payments will not be approved until certification has been received and failure to provide correctly completed documentation may result in delayed payment and adversely affect key performance indicators.
- 22.4 Due to the nature of reactive maintenance, the volume and value of works cannot be guaranteed, nor should the Contractor seek any implied value of the works or work scope in any of the information supplied by the Client.

Part 4: Orders & Payment

23 Order Mechanism

- 23.1 The Client will provide the Task Information detailed below to the Contractor and indicate the required timescale for providing response.
- 23.2 The Contractor shall provide their Contractor's Proposal within the response time indicated in the Task Information.
- 23.3 The Client will assess the Contractor's Proposal and, if acceptable, will instruct the Contractor to carry out the works.

24 Task Information to be provided to Contractors

- 24.1 The Client will provide the Contractor with the following;
- Formal written order
 - Site / Building / property reference number
 - Site / Building contact details to arrange access.
 - Written description of the extent of works, including any excluded areas.
 - Indicative timescale / specified time points (including start & end date)
 - Priority of works
 - Client's contact for both operational and H&S issues.
 - Listed status of property

25 Contractors Proposals

- 25.1 The Contractor's Proposal will contain all relevant information for the project, including but not limited to:
- Contractor's Offer, priced in accordance with the Pricing Schedule
 - Cost Sum Analysis
 - Contractor's Works Information
 - Design proposals
 - Programme to carry out the works
 - Risk Assessment Method Statements

26 Contract Pricing

- 26.1 The Contractor shall ensure that Tasks are priced in accordance with the Pricing Schedule in Appendix 1, and the provisions of the Contract.

27 Applications and Payment

- 27.1 Upon completion of the work, the Contractor shall create and submit an application for payment against the relevant order in CAFM System. See Appendix 07 - Indicative payment process for Information.
- 27.2 Payment requests are to be submitted to the Client on an individual invoice marked 'Nottingham City Council'; and emailed to Contractsandcommercial@nottinghamcity.gov.uk
- 27.3 For Reactive Maintenance & Remedial Work orders, the Contractor must attach the following to the application:
- Worksheets detailing working times and tasks undertaken
 - Digital and time-stamped photographs showing the condition or status of the building service both pre- and post-works.
 - Details of plant and materials used including costs and quantities
 - Any relevant certification or documentation
- 27.4 Failure to provide the information above may delay the approval of payment.

- 27.5 All applications will be assessed for payment on a monthly basis. All applications submitted by the end of the assessment date (the 7th of each month) that have not previously been assessed, will be assessed by the Client by the 21st of the month.
- 27.6 The Client will notify the Contractor of any disputed or rejected applications, provide the necessary reason for doing so and advise the Contractor of any further information or actions required.
- 27.7 The Client will advise the Contractor of the total value of all applications approved each month. The Contractor shall submit, via CAFM System, a consolidated invoice for this value by the 21st of the month.
- 27.8 The Client will make payment to the Contractor by the 28th of the month.
- 27.9 Unless we advise otherwise, for any building or construction services supplied under this contract the Client is an end user for the purposes of section 55A VAT Act 1994 reverse charge for building and construction services and the normal VAT rules will apply.

Part 5: Supervision and Management of the Service

28 Roles and Responsibilities

- 28.1 The Contractor shall provide sufficient supervision to ensure that operations are being carried out to the satisfaction of the Client. Such supervision shall operate at all times during the Service period.
- 28.2 The Contractor is to maintain a competent person to supervise operations. They shall be empowered to receive and act upon any instructions given by the Client or delegated representatives.
- 28.3 The Contractor shall appoint a Contract Manager to act for the Contractor in delivering the Service. The Contractor shall notify the Client not later than one month before the starting date of the name of the Contract Manager. The Contract Manager is a key person as stated in the Contract Data.
- 28.4 Any communication given to the Contract Manager is given to the Contractor. The Contractor ensures that the Contract Manager or his delegate is available to meet the Client at all reasonable times during the service period.
- 28.5 Prior to the start of the Service period, the Contractor shall notify the Client of the name of their person responsible for health and safety.
- 28.6 To support the effective delivery of best value and value for money, the Contractor shall ensure supervision and management resources monitor efficient resource usage, including operational and productive time, travel time, plant and material wastage levels and equipment usage and charges.
- 28.7 The Contractor shall, wherever practical, maintain the continuity of personnel, operatives, and Subcontractors, to carry out and complete operations
- 28.8 When undertaking works, the Contractor must have in place measures to control lone working to an acceptable level. Working alone is not in itself against the law and it will often be safe to do so, however, the law requires Clients to consider carefully, and then deal with any health and safety risks for employees working alone.
- 28.9 When the risk assessment shows that it is not possible for works to be carried out safely by a lone worker, arrangements for support or back-up should be made. Examples of high-risk activities where at least one other person may need to be present include working in a confined space and working at height. Also see the Health and Safety Executives guidance on the risks of lone working.

29 Operational Base

- 29.1 The Contractor shall base his staff and operatives in such a way that will allow the Service to be adequately carried out within the required response times as identified within the Service Information.
- 29.2 The Contractor shall, during normal working hours, maintain contact with his operatives, by telephone (landline or mobile), short wave radio or other adequate means of communication, so that requirements for emergency operations can be met within the response times.

30 Competency of Personnel

- 30.1 The Contractor is to ensure that there are an adequate number of suitably skilled, experienced, qualified, and competent employees to deliver the Service. The Contractor shall not relocate key persons to other work without the approval of the Client.
- 30.2 Prior to commencement of the Contract, the Contractor is required to submit to the Client details of employees delivering the Service and, if required, a check from the Disclosure and Barring Service. The details submitted should include:
 - Employee names and addresses

- Job title, professional qualifications, and copies of relevant competency certificates and or registration
- Any relevant criminal convictions of which the Contractor is aware
- Details of Subcontractors

- 30.3 The Contractor shall not breach the Data Protection Act or any other applicable law and shall seek all necessary consents to provide the disclosures required by this Contract.
- 30.4 The Contractor shall inform the Client of relevant criminal convictions of any employee used to deliver the Service of which the Contractor becomes aware during the service period.
- 30.5 If the nature of the delivering the Service means that any employee is exempt from the restriction on disclosing spent convictions under Regulation 4(2) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Contractor shall ensure that that employee provides information in accordance with the ROA 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 about any convictions which would otherwise be deemed to be spent.
- 30.6 If the Client so requires, the Contractor shall, at his own risk, remove any employee who has a criminal conviction from the affected property at which they are working. This includes any relevant convictions, which would otherwise be spent where the nature of the Service or Providing the Service means that the employee is exempt from the restriction on disclosing spent convictions under Regulation 4(2) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.
- 30.7 The Contractor shall submit an updated list of all people involved in providing the Service as part of the Contractor's Plan, along with copies of the latest trade certification. The plan may not be accepted if it does not accurately reflect the Contractor's resourcing capability.
- 30.8 These records shall also include all relevant asbestos awareness training and appropriate health and safety training completed. It is the responsibility of the Contractor to ensure that anyone involved in providing the Service has the necessary skills, knowledge, education, and training associated with carrying out the relevant operations.
- 30.9 The Contractor shall ensure that all employees and Subcontractors are fully aware of and comply with all site rules and behaviours expected of them as contained within the Works Information, as well as the codes of practise, industry guidelines and best practise procedures, appropriate to the operations to be completed.

31 Uniforms and Identification Badges

- 31.1 Appropriately identifiable corporate workwear or uniforms and identification badges shall be approved by the Client prior to the starting date.
- 31.2 All Contractor and Subcontractor personnel shall carry these identification badges at all times, and they shall be made available for inspection by any of the Client's employees, site staff or members of the public.
- 31.3 When requested to do so, or when communicating with other persons as a representative of the Contractor, all persons employed by the Contractor in the performance of the Services shall disclose their identity and shall not avoid so doing

32 Welfare Facilities

- 32.1 Contractors are required to provide adequate sanitary and welfare facilities for their workforce, including Subcontractors, and must only use existing Site facilities with the consent of the Site's responsible person. Where facilities are made available for use by the Contractor, misuse will result in immediate withdrawal.
- 32.2 The Contractor should assume that toilet or washing facilities are not available on site and the Contractor is required to make provision for welfare facilities.

33 Risk Assessments and Method Statements

- 33.1 The Contractor shall provide the Client with an electronic version of generic risk assessments and method statements (RAMS) for undertaking servicing, maintenance, and repairs, prior to the commencement of the Service. These shall be detailed generic RAMS covering all work activity. Failure to do so shall prevent the Contractor from undertaking the works.
- 33.2 Job specific risk assessments and method statements shall be provided by the Contractor for all minor works and specific works undertaken as a task order

34 RIDDOR and Near Miss Reports

- 34.1 The Contractor shall report all accidents and near misses to the Client by email at the earliest opportunity.
- 34.2 A full accident or near miss report (incidents that could have caused injury) shall be provided, including measures to be adopted to prevent further occurrences.
- 34.3 The Contractor shall be responsible for creating and issuing all RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) notices for any accidents or dangerous occurrences on the Client's premises.
- 34.4 All RIDDOR notices shall be emailed to the Client within the relevant legal timeframes.
- 34.5 The Contractor will liaise with the Client on any follow up investigations and advice.

35 HSE Fee for Intervention

- 35.1 The Contractor shall be responsible for any costs issued by the Health and Safety Executive (HSE) for 'Fees for Intervention', following a HSE visit to site in which the Contractor is responsible for.
- 35.2 The Client shall be informed of any HSE officers attending site or issuing any notices.
- 35.3 Where the Contractor needs to expend time in assisting the HSE investigation, any associated costs will be subtracted from the final account.

Part 6: Administration of the Service

36 Account Management

- 36.1 The Contractor will appoint a named Account Manager who will be the primary liaison between the Contractor and the Client.
- 36.2 The Account Manager will provide the Client with all reports and data required under the Contract and will provide any additional information reasonably requested in a timely manner.
- 36.3 If for any reason the named Account Manager is unavailable for any period longer than one working day an alternative of equivalent status or higher within the organisation will be made available.

37 Review Meetings

- 37.1 The Contractor shall attend regular review meetings with the Client.
- 37.2 It is envisaged that the first meeting will take place within 30 days (1 calendar month) of the commencement of the Contract and thereafter at intervals to be defined at the first meeting.
- 37.3 The Client and Contractor can agree to arrange review meetings on an ad-hoc basis as required at any time.
- 37.4 The meetings will be used as a forum to review progress and resolve any issues encountered, including:
 - Key Performance Indicators
 - Management of Operations
 - Programme Delivery
 - Works Outstanding
 - Payments and Applications

38 Asset Management System

- 38.1 The Client uses CAFM System, a web-based asset management system, to record and manage all maintenance works.
- 38.2 The Contractor will be provided with end-user accounts to access CAFM System and receive details of instructions, and orders from the commencement of the Service period.
- 38.3 The Contractor will be required to update works information, submit applications and invoices and upload documents as required throughout the Service period.
- 38.4 The Contractor's engineers shall also be required to access the system and update the status of orders via a mobile phone or other mobile device. The Contractor shall ensure that their engineers have a mobile device that can access the internet for this purpose.
- 38.5 Initial system training will be provided by the Client at Loxley House. The Contractor shall make relevant employees available to attend any such training as required.
- 38.6 The Client will provide the Contractor and its employees with on-going training, system support and updates of proposed system changes as appropriate throughout the Service period.
- 38.7 The Contractor shall inform the Client should any of their employees cease employment and the relevant user accounts will be removed.
- 38.8 Use of CAFM System is provided at no cost to the Contractor for the duration of the contract.

39 Project Records

- 39.1 The project will be managed on an open-book basis. The Client reserves the right to inspect any information or documents related to the project, or to arrange to have them inspected by a third party, subject to usual considerations of confidentiality. The Contractor shall accommodate such requests, and not unreasonably restrict access.

40 Updating Specifications, Assets & Equipment

- 40.1 The Contractor is required to advise the Clients of any outdated specified practices contained within the Service Information and provide recommendations of new practices, referencing the relevant changes to industry standards or BS/EN documents.
- 40.2 The Contractor shall notify the Client of any missing or inaccurate data provided by the Client, in relation to the assets or equipment.
- 40.3 The Contractor shall advise the Client of cost savings that could be realised through changes to specifications, frequencies, and standards. Any advice or recommendations given should ensure that the Client maintains compliance with all relevant legislation and statutory duties.
- 40.4 All equipment replacement shall be compliant with the existing installation, any deviation must be authorised by the Client.
- 40.5 If any components are classified obsolete, then an equivalent component may be used or an alternative sourced within an agreed time with the Client.
- 40.6 Upon the end of this Service the Contractor will undertake the following;
- Ensure all live CAFM System task orders are completed within the defined timescales.
 - Ensure all asset information is correct and updated and electronically sent to the Client.

Part 7: Property Information

1 Affected Property List

- 1.1 An Affected Property List detailing the site or building names and addresses, where the service(s) are to be delivered shall be provided to the Contractor.
- 1.2 There will be an occasional need during the Service duration to add or omit properties from the Affected Property List. The Contractor shall accommodate any changes to the Affected Property List; asset information and maintenance schedule and adjust their delivery requirements accordingly.
- 1.3 The Contractor will be issued with an instruction from the Client detailing the site, schedule, and date, that the delivery of the Service is to start or finish. In such instances, the Contract will be adjusted via an instruction. The Contractor will immediately begin, or cease, delivering the Service at the property from the start or end date contained within the instruction.
- 1.4 When delivering the Service, the Contractor is also required to consider the implication of their activities for listed and historic buildings and structures. The Clients will provide a list of these properties to the Contractor.
- 1.5 The Contractor is required to advise the Clients of any instance where an instruction has been received that will require listed building consent prior to undertaking the works.
- 40.1 All buildings may involve working at height and potentially specialist access and lifting equipment to access the highest points.
- 1.6 The affected properties comprise a wide-ranging portfolio owned and maintained by the Client and Others. The building use, construction type, age and condition of the property will vary, and the affected properties may include but not limited to:
 - Adult Day Centres and Care Homes
 - Car Parks
 - Cemeteries
 - Children Centres
 - Civic buildings
 - Commercial and industrial premises, including workshops, factories, warehouses, multi-occupied tenanted properties
 - Community Centres
 - Domestic Properties
 - Depots
 - Joint Service Centres
 - Leisure Centres
 - Libraries
 - Markets
 - Museums
 - Parks and recreation grounds
 - Schools and education buildings
 - Structures e.g. monuments, war memorials.
 - Tenanted properties
 - Theatres
 - Youth Centres
 - Public Toilets

41 Constraints on how the Contractor Provides the Service

- 41.1 The Client has a number of Corporate and Civic Buildings and Heritage sites which may require works to be undertaken outside of Normal Working Hours and/or in a specialist manner due to heritage status. The Facility Manager or Building Manager responsible for these sites must be contacted to arrange access.

42 Broadmarsh Car Park and Bus Station

- 42.1 The Broadmarsh Car Park and Bus station is a 24/7 operational site so careful planning with the Facilities Manager is required prior to any site visit.

43 Loxley House

- 43.1 Loxley House is the Clients Headquarters, and the rear of the building is compromised by a canal. Careful planning is required to any replacement glazing required at the rear of the building. The front of the building has steel louvres again careful planning is required should a replacement glazing unit be required. The glazed smoke vents are accessed from the room (5th storey)

44 Contemporary Arts Centre

- 44.1 The Contemporary Arts centre is controlled via an environmental condition unit and therefore careful planning with the Building manager is required should any replacement glazing be required.

45 Nottingham Theatre Royal & Royal Concert Hall

- 45.1 The Theatre Royal is situated near a busy junction and trams intersection, careful planning with the building manager is required.

46 Byron House

- 46.1 Byron House is the Police Headquarters and the Clients enforcement section therefore careful planning is required to gain access to the building.

2 Victoria Centre

- 2.1 The Client has some affected properties within the Victoria Shopping Centre. Where these are included in the Service, the Contractor must comply with the requirements stipulated below to gain access to these sites.
- 46.2 A minimum of £10 million Public Liability Insurance is required for works at the Victoria Centre.

3 Victoria Centre Site Visits

- 3.1 Victoria Centre has a system to manage the safety and security of the centre. Contractor Tracker is a system used at the Victoria Centre and all Contractors must be registered on the system. Failure to obtain an advance permit may result in your Contractors being turned away or removed from site.
- 3.2 At Stage one, Contractors will be required to register and upload their public Liability Insurance via <https://victoriacentre.ctracker.co.uk>.
- 3.3 Once registered, stage two will require Contractors to log on and make an access request and then dependant on level of works they may be required to upload Risk Assessments and method statements too. This must be done at least 48 hours in advance of the visit unless an emergency.
- 3.4 In an emergency it is important that the Contractor has already registered on the tracker system anyway. Contractors that are required for emergency works are to request a 365 permit and then they are on the system and able to access the centre for emergency works.
- 3.5 Should the works involve any "high risk" works then they would need a specific permit. Hot work, roof access, live safety system isolations etc. Access requests must be submitted via this website, 48 hours in advance of any visit to these centres. Any Victoria Centre enquires should be directed to Markets.Fairs@nottinghamcity.gov.uk.

SCHEDULE 3**CALL OFF PROCESS****47 Framework Award Procedures**

- 47.1 Call-offs from the framework will be made by either Direct Award or Further Competition.
- 47.2 The Employer may approach the Contractors based on ranked order in accordance with the Call-off Procedure for Direct Awards below, where the requirement is urgent and needs the Contractor to start on site within ten days.
- 47.3 In any other situation, a further competition will be undertaken in accordance with the clause below.

48 Call-off Procedure for Direct Awards by Ranked Order below £5,000.00

- 48.1 The Employer will telephone the Contractor ranked first on the tender to make them aware that a call-off is required and to discuss the requirement.
- 48.2 The Employer will email the Contractor, providing the project information and appropriate form of contract, and indicating the required timescale for the Contractors response.
- 48.3 The Contractor will email the Employer within 24 hours, either confirming that they will be providing a quote for the works, or declining so to do.
- 48.4 Should the first ranked supplier be unable or unwilling to undertake the work, the second ranked supplier will be approached in a similar fashion, and so forth.
- 48.5 The Contractor shall email the Employer within the required response time providing their Offer, priced in accordance with the framework pricing schedule, and proposals to carry out the works.
- 48.6 The Employer will assess the response and, if acceptable, will contact the Contractor by email to award the contract and to arrange for contract completion.

49 Call-off Procedure for Further Competition over £5,000.00

- 49.1 For further competitions, all Contractors party to the framework will be invited to submit a priced offer against the Employer's Works Information provided in accordance with the Framework Agreement.
- 49.2 The Employer will email all Contractors on the framework, providing the Employers Works Information, and indicating the required timescale for response.
- 49.3 Contractors will email the Employer within the agreed time period, either confirming that they will be providing a quote for the works or declining so to do.
- 49.4 Contractors shall email the Employer within the required response time providing their Offer, priced in accordance with the framework pricing schedule, and proposals to carry out the works, as indicated below.
- 49.5 The Employer will assess the responses, awarding the contract to the Contractor providing the most economically advantageous offer based on the criteria stated in the invited to provide a quote, which may include:

7.5.1 Offer Price

7.5.2 Contractors Proposals

7.5.3 Programme timelines

- 49.6 Programmed timelines will pass / fail criteria, based on the *Contractors* ability to complete the works by the stated end date and achieve any intermediate key dates advised by the *Employer*.
- 49.7 Contractors proposal, including any design required, and offer price will be evaluated by the *Employer* based on the criteria indicated in the Invitation to Tender.
- 49.8 The *Employer* will contact the winning *Contractor* by email to award the contract and to arrange for contract completion.

50 Call-Off Contracts

- 50.1 Call-off contracts will be completed by signing a formal contract; the form of contract to be used will be the appropriate NEC4 as indicated in the Client's Works Information, and in accordance with the framework terms.
- 50.2 The model forms of call-off contract are as included in The Framework Agreement

SCHEDULE 4

PRICING

See attached document to the contact 'CPU 5361-Tender Pricing' which contains all detailed submitted tender pricing information.

51 Preamble

- 51.1 This pricing schedule is to be used in conjunction with NEC4 for pricing works.
- 51.2 To Provide the Works means everything necessary to undertake the works required in accordance with the specification and the contract, and all incidental work, services, and actions which the contract requires.

52 Call-Off Contract Pricing

- 52.1 Contractor's Prices for each call-off Contract must include all activities needed to fulfil the requirements of the *Employer's* call-off Works Information.
- 52.2 The Contractor shall ensure that each contract is priced in accordance with the terms of the framework agreement and call-off contract.
- 52.3 Contractors may not exceed the Price shown for items contained in the Price List; however they may submit quotes based on lower Prices if appropriate.
- 52.4 Each call-off contract's Price List Prices must be agreed before the contract is formed. Prices shall be calculated using this schedule and agreed by the Parties working together in good faith and a spirit of mutual trust and co-operation.
- 52.5 Failure to agree Prices for the works will result the *Employer* seeking alternative means to procure the works. Any surveys carried out will become the intellectual property of the *Employer*.
- 52.6 Once agreed the total of the Prices from the Price List will form the **offered total of the Prices** in the Contract Data Contractor's Offer.
- 52.7 The total of the Prices may be varied from time to time by the provisions of a call-off contract.

53 Annual Review of Pricing

- 53.1 The Prices covered by this schedule are subject to review on the anniversary of the agreement, and may be uplifted in accordance with the following mechanisms:
- 53.2 Costs for people shall be subject to annual uplift by no more than the value of CPI at the review date.
- 53.3 Costs for equipment shall be subject to review based on current market prices at the review date. Contractors may submit prices for review based on the following:
Reference to CPI / BCIS / ONS / Other Published Index.
Quotes from their supply chain.
- 53.4 Contractors should submit their prices for review to the Contract Manager no later than 28 days before the review date. If approved, these shall form an amendment to the Contract Price List.

54 Prices & Rates for Contract Data

- 54.1 The Pricing Schedule attached to this tender gives the prices and rates applicable to call-off contracts under this Framework.

SCHEDULE 5

TEMPLATE CALL-OFF CONTRACT

NEC4 Engineering & Construction Short Contract

THIS AGREEMENT is made on

BETWEEN:

- (1) Nottingham City Council of Loxley House, Station Street Nottingham NG2 3NG (the “Employer”) AND
- (2) Miller Freeman & Sons (Nottm) Ltd whose registered office is at 4 Parkyn Road, Daybrook, Nottingham, Nottinghamshire, NG5 6BG (the “Contractor”)

Whereas:

The *Client* wishes to appoint the *Contractor* to Provide the Works at the Site and the *Contractor* has agreed to Provide the Works in accordance with the conditions of contract specified in clause 3 of this Agreement

IT IS AGREED as follows:-

1. The *Contractor* will Provide the Works in accordance with the conditions of contract specified in clause 3
2. The *Client* will pay the *Contractor* for the Works and comply with his obligations in accordance with the conditions of contract specified in clause 3.
3. The contract for the Works incorporates the *conditions of contract* in the form of the NEC4 Engineering and Construction Short Contract June 2017 edition incorporating the amendments set out in Appendix 2.

SIGNED on behalf of
NOTTINGHAM CITY COUNCIL

Authorised Signatory

SIGNED on behalf of
Miller Freeman & Sons (Nottm) Ltd

Authorised Signatory

[For call off arrangements with significant design elements or with a value of over £2m then the agreement must be executed as a deed]

GIVEN under the Common Seal of
NOTTINGHAM CITY COUNCIL

Authorised Signatory

EXECUTED as a Deed by

XXXXXXXXXXXXXXXXXX

Acting by 2 Directors **OR** a Director and witnessed

.....
Director

.....
Director

In the presence of:

signature of witness

Name of witness

Address of witness

Occupation of witness

Appendix 1

Contract Data

The *Client* is

Name: **Nottingham City Council**

Address for communications: **XXXXXXX**

Telephone: **XXXXXX**

Address for electronic communications: **xxxxxxxxxx**@nottinghamcity.gov.uk

The *Project Manager* is: **XXXXXXXXXX**

The *works* are to **xxxxxxxxxx**

The *site* is **xxxxxxxxxx** as set out in the *Scope*

The *starting date* is **xxxxxx**

The *completion date* is **xxxxxx**

The *period for reply* is **2 weeks**

The *defects date* is **12 months following completion**

The *defect correction period* is **28 days**

The *delay damages* are **xxx** per day

The *assessment day* is the **1st day** of each month

The *retention* is **x%**

The United Kingdom Grants, Construction and Regeneration Act (1996) **does/does not** apply

The Adjudicator is

The interest rate on late payments is **0.25%** per complete week of delay

For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property is limited to: **the value of the insurances required in the insurance table**

The *Client* provides this insurance:

The minimum amount of cover for the third insurance stated in the

Insurance Table is for any one event £5,000,000

The minimum amount of cover for the fourth insurance stated in the

Insurance Table is, for any one event £1,000,000

The *Adjudicator* nominating body is **Institution of Civil Engineers**

The *tribunal* is the **Courts of England and Wales**

The conditions of contract are the NEC4 Engineering and Construction Short Contract June 2017 and the amendments, alterations, additions and deletions as contained in Appendix 2 apply and take priority over the standard form short contract.

The Contractor's Offer

The *Contractor* is

Name: **xxxxxxxxx**

Address: **xxxxxxxxxx**

Telephone: **xxxxxxxxx**

Address for electronic communications: xxxxxxxxxxxx

The *fee percentage* is x%

The *people rates* are:

category of person	unit	rate
--------------------	------	------

xxxxxxxx		

The *published list of Equipment* is xxxxxxxxx

The *percentage for adjustment of Equipment* is x% (state plus or minus)

The *Contractor* offers to Provide the Works in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*

The offered total of the Prices is [to be inserted]

Price List

see Appendix 3

Scope

see Appendix 4

Site Information

see Appendix 4

Appendix 2

Amendments to Contract

The following clauses of this contract shall be amended:

1 General

11.2(6) At the end of the first sentence add:

'less Disallowed Cost'.

11.2(17) Insert a new clause 11.2(17)

Data Protection Legislation means:

- i. the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/68) and any applicable national implementing laws as amended from time to time;
- ii. the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and
- iii. all applicable law about the processing of personal data and privacy

11.2(18) Insert a new clause 11.2(18)

Data Subject has the meaning given to it in the Data Protection Legislation.

11.2(19) Insert a new clause 11.2(19)

Personal Data has the meaning given to it in the Data Protection Legislation.

11.2(20) Insert a new clause 11.2(20)

'Disallowed Cost is cost which

- Is not justified by the *Contractor's* accounts and records;
- Should not have been paid to a Sub-contractor or supplier in accordance with its contract;
- Was incurred only because the *Contractor* did not
 - Follow an acceptance or procurement procedure stated in the Scope;
 - Give an early warning which the contract required it to give; or
 - Give notification to the *Client* of the preparation for the conduct of an adjudication or proceedings of a tribunal between the Contractor and a Sub-contractor or supplier

and the cost of

- Correcting Defects after Completion;
 - Correcting Defects caused by the *Contractor* not complying with a constraint on how it is to Provide the Works stated in the Scope;
 - Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Scope; and
-

- Resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Client* requested

12.5 Insert a new clause 12.5:

“Notwithstanding any other provision of this contract, the terms “acceptance”, “approval” or similar when used in the context of any acceptance or approval to be given by or on behalf of the *Client* has the meaning “acceptance of general principles only” and no such acceptance or approval shall diminish or relieve the *Contractor* from any of his obligations or liabilities under this contract (save for the obligation to seek or obtain such acceptance or approval)”.

12.6 Insert a new clause 12.6:

“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.”

13.3 Insert a new clause 13.3:

“The following communications shall be deemed to have no effect if made by electronic mail transmission:

- any notification of a wish to terminate this contract or the employment of the Contractor under it;
- any notification by the Contractor of his intention to suspend performance of his obligations under this contract;
- any invoking by either party of the procedures applicable under this contract to the resolution of disputes or differences;
- any agreement between the parties amending the provisions of this contract”.

18 Insert a new clause 18:

Data Protection

18.1. Both Parties will comply with all applicable requirements of the Data Protection Legislation. These clauses are in addition to, and does not relieve, remove or replace, each Party’s obligations under the Data Protection Legislation.

It is agreed that:

18.2. Without prejudice to the generality of clause 18.1, both Parties will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to each other for the duration and purposes of this agreement.

18.3. Without prejudice to the generality of clause 18.1, the *Contractor* shall, in relation to any Personal Data processed in connection with the performance by the *Contractor* of its obligations under this agreement:

18.3.1. Process the Personal Data only on the written instructions of the *Client* and only as required for the purpose of the performance of this agreement;

18.3.2. Ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the *Client*, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

18.3.3. Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

18.3.4. Not transfer any Personal Data outside of the European Economic Area.

18.3.5. Assist the Client, at the Contractor's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

18.3.6. Notify the Client without undue delay on becoming aware of a Personal Data breach.

18.3.7. At the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement; and

18.3.8. Maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Client or the Client's designated auditor.

18.4. The Client does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement.

2 The Contractor's Main Responsibilities

20.3 Insert a new clause 20.3:

"The works when completed comply with all appropriate requirements of any relevant local or other relevant authority and all relevant statutory requirements."

20.4 Insert a new clause 20.4:

"The *contractor* checks the Scope provided by the *Client* and satisfies itself that its own scope meets the *Client's* Scope and all applicable Law, with no discrepancy within and or between the Scope and its own scope. Where there is ambiguity, inconsistency or conflict between these documents the *Client's* Scope will prevail".

20.5 Insert a new clause 20.5:

“The *Contractor*’s obligation is to exercise (and warrants that it has exercised) all the reasonable skill, care and diligence normally used by competent and appropriately qualified professionals experienced in undertaking works similar to the relevant part of the *works*”.

21.4 Insert a new clause 21.4:

“The *Contractor*, in subletting of any part of the service,

- procures that the relevant subcontract contains such obligations as necessary to ensure that it is in all respects compatible with the terms of this contract;
- warrants such Subcontractor’s compliance with this contract’s Modern Slavery Act requirements;
- warrants that all sub-contractors are fully aware of their obligations under the CDM Regulations and are fully competent and are adequately resourced to meet those obligations;
- procures that all relevant subcontracts shall be executed and delivered as a deed and provides to the Client a certified copy of any subcontract (save for particulars of the cost of such subcontract service).

21.5 Insert a new clause 21.5:

“The *Contractor* notifies the *Client* of the name and contact details of each Subcontractor before appointing the Subcontractor. The *Contractor* does not appoint a subcontractor if there are compulsory grounds for excluding the subcontractor under regulation 57 of the Public Contracts Regulations 2015”.

21.6 Insert a new clause 21.6:

“The *Contractor* includes in any subcontract awarded by him provisions requiring that:

- payment due to the subcontractor under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice;
- invoices for payment submitted by the subcontractor are considered and verified by the *Contractor* in a timely fashion;
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed; and
- any contract awarded by the subcontractor for work included in this contract includes provisions to the same effect as these provisions”.

4 Quality Management

42.3 After the last sentence insert:

“Where due to the non-availability of parts or materials or other circumstances beyond the *Contractor*’s control it is not possible to correct any Defect within any defects correction period in the Contract Data the *Contractor* makes an appropriate temporary repair and corrects the Defect as soon as possible and keeps the *Client* informed from time to time”.

44.1 Add to the end of the existing clause:

“The *Client* informs the *Contractor* of the amount which it actually cost the *Client* to have the Defect corrected by other people within a reasonable time of that being known. If the actual

cost differs from that amount assessed and paid by the *Contractor* to the *Client* either the *Client* repays promptly the *Contractor* any overpayment or the *Contractor* promptly pays to the *Client* any underpayment.”

5 Payment

51.4 Insert a new clause 51.4:

“In addition to any other rights and/or remedies of the *Client*, whenever any sum of money is recoverable from or payable by the *Contractor* under this contract that sum may be deducted from any sum then or afterwards due to the *Contractor* under this contract provided that the *Client* notifies the *Contractor* in writing not later than seven days before the final date for payment, specifying the amount(s) to be withheld and the corresponding ground(s) for withholding payment”.

6 Compensation Events

60.1(13) Insert new clause:

“A change to the guidance issued by the UK Government or a local authority, which affects working practices, solely due to COVID19 or any future pandemic as declared by the UK Government or a local authority, occurring after the *starting date*”

8 Liabilities and Insurance

83.3 Insert a new line in the Insurance Table:

Professional Indemnity Insurance – Liability of the <i>Contractor</i> for claims made against it arising out of the <i>Contractor’s</i> failure to use the reasonable skill, care and diligence normally used by competent and appropriately qualified professionals providing works similar to the <i>works</i>	The amount as stated in the Contract Data in respect of each and every claim or series of claims arising out of the same original cause or source, without limit to the number of claims
--	--

This provision applies where the *Contractor* has any design responsibilities

9 Termination and Dispute Resolution

90.8 Insert a new clause 90.8:

“the *Client* may terminate the *Contractor’s* obligation to Provide the Works if any of the provisions of regulation 73(1) of the Public Contracts Regulations 2015 apply.

90.9 Insert a new clause 90.9:

“If the *Client* terminates under the provisions of regulation 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *contractor* at the date when this contract came into existence the amount due on termination is the same as if the *Contractor* has substantially failed to comply with the contract (Reason 2)”.

90.10 Insert a new clause 90.10:

“If the *Client* otherwise terminates under the provisions of regulation 73(1) of the Public Contracts Regulations 2015, the amount due on termination is the same as if termination was for Reason 9.

Insert the following new section:

10 Miscellaneous

100 The Contracts (Rights of Third Parties) Act 1999

100.1 A person who is not a party to this contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified.’

100.2 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.’

110 Confidentiality and Freedom of Information

110.1 A Party (the Recipient) receiving Confidential Information from the other Party (which, in the case of the *Contractor*, includes any information received from the *Client*) (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

110.2 The provisions of Clause 110.1 shall not apply to any Confidential Information which.

- Is in or enters the public domain other than by breach of this Agreement or other act or omission of the Recipient
- Is obtained from a third party who is lawfully authorised to disclose such information
- Is required to be disclosed to ensure the compliance of the Client with the FOIA or the Environmental Information Regulations
- 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
- (provided that the information is subject to an equivalent confidentiality undertaking enforceable by the Discloser) the Recipient discloses to its professional advisors or insurers

110.3 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

- identify it specifically; and
 - explain the grounds for exemption from disclosure and the time period applicable to that sensitivity
-

110.4 Notwithstanding Clause 110.3, all decisions regarding disclosure of information following a Request For Information will be made at the sole discretion of the *Client*, as the case may be. The *Contractor* acknowledges that, even where the *Contractor* has indicated that information is commercially sensitive, the *Client* may be required to disclose it under Law, with or without consulting the *Contractor* and the *Client* shall not be required to consult the *Contractor* prior to disclosure

110.5 The *Contractor* shall transfer to the *Client* 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 *Client*

110.6 Where the *Client* is managing a Request For Information, the *Contractor* shall provide all reasonable assistance to the *Client* and shall respond, together with copies of any documentation requested, within 5 Business Days of any request for assistance

120 Modern Slavery

120.1 The *Client* is under a duty to co-operate with the Commissioner in accordance with the Modern Slavery Act 2015 (“MSA”)

120.2 If the *Contractor*’s turnover is above the threshold the *Contractor* complies with its duties under the MSA as to disclosure and transparency

120.3 Where applicable, the *Contractor* reports to the *Client* any incidents or concerns of modern slavery as soon as reason as there are reasonable grounds to suspect in order to assist the *Client* to comply with its duties under the MSA

130 Competition Law, Corrupt Gifts and Payments

130.1 The *Contractor*

- complies 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 (Relevant Requirements)
 - complies with the *Client*’s ethics, anti-bribery and anti-corruption policies (Relevant Policies)
 - has and maintains throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and shall enforce them where appropriate
 - promptly reports to the *Client* 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
 - within 2 months of the date of this Agreement, and annually thereafter, certifies to the *Client* in writing, compliance with this Clause by the *Contractor* and all persons associated with it. The *Contractor* provides such supporting evidence of compliance as the *Client* reasonably requests
 - ensures 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 (Relevant Terms). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Client and for any breach by such persons of any of the Relevant Terms

- For the purpose of this Clause, 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, a person associated with the Contractor includes any Sub Contractor
- Does not act in a manner, in relation to the performance of this Agreement which the Client 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 or any other competition Law provision or is otherwise anti-competitive

130.2 Any breach of this clause 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 shall entitle the *Client* to terminate this Agreement under clause 90.1 and shall be an additional reason for clause 92.2 to apply.

130.3 Any dispute, difference or question arising in respect of the interpretation of this Clause, the right of the *Client* to terminate this Agreement shall be decided by the *Client* acting reasonably, whose decision, in the absence of manifest error, shall be final and conclusive

140 Whistleblowing

140.1 The *Contractor* ensures that staff engaged by the *Contractor* in connection with any of the Services (including sub-*Contractor* 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

150 Records and open book accounting

150.1 General

The *Contractor* at all times:

- maintains a full and accurate record of particulars of the costs of performing the Services under this contract
 - maintains a full and accurate record of time spent on the delivery of the Works under this contract
 - keeps books of account in accordance with best accountancy practice with respect to this Agreements showing in detail
 - administrative expenses
 - payments to subContractors
 - capital and revenue expenditure
 - such other items as the *Client* may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement
-

- maintain a full record of all incidents relating to health, safety and security which occur in the delivery of the works
- when the Client requests provides a written summary of any of the matters and/or other details which the Contractor is required to record by this Clause in such form and detail as the Client may reasonably require to enable the Client to monitor the performance by the Contractor of its obligations under this contract

150.2 The *Contractor* permits all records referred to in this clause together with all records, data and other information in whatever format relating to this contract to be examined and copied from time to time by the *Client's* auditor and their representatives and other representatives of the *Client*

150.3 The records referred to in this Clause are retained for a period of at least 6 years after the *Contractor's* obligations under this contract have come to an end

150.4 All information referred to in this Clause is subject to the confidentiality provisions set out elsewhere in this contract.

SCHEDULE 6
WARRANTIES AND GUARANTEES

N/A

SCHEDULE 7
KEY PERFORMANCE INDICATORS

Key Performance Indicators: Summary Table

Ref	Performance Indicator	Performance Bands		
KPI 1	All reactive maintenance orders to be completed by target date	100%	95-99%	<95%
KPI 2	All PPM activities to be completed by target date	100%	95-99%	<95%
KPI 3	No PPM activities that have a status of overdue	100%	95-99%	<95%
KPI 3a	Total Number of overdue PPM activities	100%	95-99%	<95%
KPI 4	All orders to be completed and applied for within 90 days of completion date	100%	95-99%	<95%
KPI 5	All invoices to be uploaded within 72 hours of monthly certificate being created	100%	95-99%	<95%
KPI 6	Local Employment	60% & Over		
KPI 7	Local Spend	60% & Over		

Key Performance Indicators: Detail

	Service Level Agreement	Definition	Measure	Measure Type
KPI 1	All reactive maintenance orders to be completed by target date	Reactive maintenance orders where the supplier's completed date/time is before or equal to the target date/time	Reactive maintenance orders that meet completion SLA divided by total reactive maintenance orders	%
KPI 2	All PPM activities to be completed by target date	PPM activities where the completed date/time is before or equal to the target date/time	PPM activities that meet completion SLA divided by total PPM activities	%
KPI 3	No PPM activities that have a status of overdue	PPM activities that have exceeded the target date/time and do not contain a completed date/time	Overdue PPM activities divided by total number of PPM activities that have exceeded target date/time	%
KPI 3a	Total number of overdue PPM activities	Total number of PPM activities that have exceeded the target date/time and do not contain a completed date/time	Total number of PPM activities that have exceeded target date/time	Number
KPI 4	All orders to be completed and applied for within 90 days of completion date	Suppliers to complete order and submit application for payment within 90 days of target completion date	Number of orders that do not meet SLA divided by total number of orders received	%
KPI 5	All invoices to be uploaded within 72 hours of monthly certificate being created	Supplier to upload consolidated invoice within 72 hours of monthly certificate being created	Number of invoices uploaded that meet SLA divided by total number of invoices uploaded	%
KPI 6	Local Employment	A measure of the locality of the home/ lodging for each person who works on site, taken during a project, to determine the level of local employment on a project	The data will be collected at the point each person signs the site register by recording their post code.	% 60% to be within Nottingham City and its surrounding boroughs of Broxtowe, Gedling & Rushcliffe.
KPI 7	Local Spend	A measure of spend distribution throughout the supply chain, based on the location of the office undertaking the work.	The Contractor will collect the post code of the office/ site location for each organisation in their supply chain on a per-project basis.	60% to be within Nottingham City and its surrounding boroughs of Broxtowe, Gedling & Rushcliffe.