

Framework Agreement Start Date:

OPTIVO

AND

SERVICE PROVIDERS

**FRAMEWORK AGREEMENT
For the provision of New Build**



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THIS AGREEMENT dated as above

is made **BETWEEN:**

- (1) **OPTIVO** (FCA Registration Number 7561) of Grosvenor House, 125 High Street, Croydon CR0 9XP in its capacity as representative of and agent for the SEC Members (the “**Client**”); and
- (2) The **SERVICE PROVIDERS** named in Schedule 1 (Framework Lot) of this Framework Agreement.

1. BACKGROUND

Framework Agreement

- 1.1 The Client is setting up a framework of service providers for the provision of a range of New Build Works, which the Client and Authorised Entities can call upon on an ad hoc basis as required.
- 1.2 Each Service Provider is hereby appointed to the Framework Lots as set out in Schedule 1 (Framework Lots) of this Framework Agreement. This Framework Agreement shall comprise 3 main Framework Lots.
- 1.3 Each Service Provider has represented that it has the necessary skills, experience and resources to provide the Services required of it under and pursuant to this Framework Agreement and that it is willing to do so.

Role of this agreement

- 1.4 This Framework Agreement is intended to govern the on-going relationship between the Service Providers, the Client and the Authorised Entities in connection with any request made by the Client or an Authorised Entity to a Service Provider to provide Services.
- 1.5 This Framework Agreement is designed to encourage the Client, Authorised Entities and the Service Providers to work with each other in an open, co-operative and collaborative manner in a spirit of mutual trust, respect and co-operation with the joint intention of achieving the Framework Objectives.
- 1.6 In consideration of the procurement, preparation and administration of this Framework Agreement by the Client, each Service Provider shall pay to the Client the SEC Fees payable in respect of each Call Off Contract awarded to it under this Framework Agreement in accordance with the provisions of Clause 27.

2. DEFINITIONS AND INTERPRETATION

Definitions

- 2.1 In this Framework Agreement, the following expressions shall have the following meanings:

“ Action Plan ”	has the meaning given to that term in Clause 7.7;
“ Actual Monthly Amount ”	has the meaning given to that term in Clause 27.1.2;
“ Alternative Service Provider ”	has the meaning given to that term in Clause 5.3;
“ Authorised Entity ”	means an Entity with whom the Client has entered into an Authorising Agreement pursuant to Clause 2A.1;
“ Authorising Agreement ”	means the form of agreement contained in Schedule 5

(Authorising Agreement).

”Award Process”

means the process for the award of Call Off Contracts outlined in Clause 5 (which term shall include Mini-Competitions);

“Call Off Contract”

means any one of the following contracts as selected by the Client or the Authorised Entity making the call off at their absolute discretion:

the JCT Design & Build form of contract can be used if the client chooses this contract form. Alternatively a bespoke contract of the client’s choosing;

contract amendments (if applicable) will be issued at the point of call off and such further project specific amendments as may be agreed between the Client or the Authorised Entity and the Service Provider;

“Call Off Contract Annual Review”

has the meaning given to that term in Clause 7.1;

“Call Off Contract KPIs”

means any key performance indicators contained in any Call Off Contracts entered into between a Service Provider and an Authorised Entity under this Framework Agreement;

“Capability Criteria”

means the criteria contained in Schedule 3 (Capability Criteria), subject to such amendments as the Client or the Authorised Entity considers necessary to reflect the requirements of the Call Off Contract in question;

“Commencement Date”

means the date of this Framework Agreement;

“Control”

means the right to control as described in section 416 of the Income and Corporation Taxes Act 1988;

“Data Protection Legislation”

means the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679 (as varied by the Data Protection Act 2018), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and any additions, updates thereof;

“Entity”

means any entity listed or referred to in the OJEU Notice as being entitled to access the Framework Agreement and award Call Off Contracts under it;

“Expiry Date”	means the fourth (4 th) anniversary of the Commencement Date;
“EIR”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;
“First SEC Fee Date”	has the meaning given to that term in Clause 27.1.1;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
“Framework Agreement”	means this framework agreement and its schedules;
“Framework Lots”	means the Lots set out in Schedule 1 (Framework Lots);
“Framework Objectives”	has the meaning given in Clause 4;
“Framework Term”	means the period commencing on the Commencement Date and, subject to earlier termination in accordance with the terms of this Framework Agreement, ending on the Expiry Date;
“Framework Quality Commitments”	means the quality commitments made by the relevant Service Provider in its tender submission for the Framework Agreement;
“Information”	has the meaning given under section 84 of the FOIA;
“Lower Ranked Service Provider”	has the meaning given to that term in Clause 5.4.2;
“Mini-Competition”	means the procedure outlined in Clauses 5.5 to 5.10;
“OJEU Notice”	means the OJEU notice for the Framework Agreement published in the Official Journal of the European Union and dated [REDACTED].
“Pricing Submission”	means the relevant Service Provider’s pricing submission as contained in their tender submission for the Framework Agreement;
“Projected Monthly Value”	has the meaning given to that term in Clause 27.1.1;
“Quality Submission”	means the relevant Service Provider’s quality submission as contained in their tender submission for the Framework Agreement;
“Relevant Authority”	means any court with competent jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the

government of the United Kingdom or of the European Union;

“Relevant Fee Percentage”

means:

- (a) where the Call Off Contract in question has been awarded by an Authorised Entity that is full member of SEC, one and a half percent (1.5%); and
- (b) where the Call Off Contract in question has been awarded by an Authorised Entity that is a guest member of SEC, two percent (2%);

“Request for Information”

means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR;

“SEC”

means the social housing procurement consortium known as the South East Consortium, constituted by an agreement between its members, as may be varied from time to time;

“SEC Fees”

means the fees payable by a Service Provider to the Client in respect of each Call Off Contract awarded to that Service Provider under this Framework Agreement, as more particularly described in Clause 27;

“SEC Member”

means any full member or guest member of SEC from time to time;

“Services”

means the Services to be carried out by a Service Provider pursuant to a Call Off Contract as more specifically described in the relevant Call Off Contract;

“Service Provider”

means any one of those organisations listed in Schedule 1 (Framework Lots) of this Framework Agreement;

“Subsequent SEC Fee Date”

has the meaning given to that term in Clause 27.1.1;

“Subsidiary”

has the meaning given to it in section 1159 of the Companies Act 2006;

“Supply Chain”

means any and all persons engaged by a Service Provider, the Client or an Authorised Entity (as appropriate) in connection with a Call Off Contract with which the Service Provider, the Client or Authorised Entity (as appropriate) is involved;

“Suspension Notice”

means a notice issued pursuant to Clause 5.17, 7.9 or 27.9 (as the case may be);

“Warning Notice”

means a notice issued pursuant to Clause 27.8;

“Working Days”

means Monday to Friday excluding public holidays.

- 2.2 References to Clauses and schedules are references to Clauses of and schedules to this Framework Agreement.
- 2.3 The provisions of the schedules are incorporated in this Framework Agreement.
- 2.4 Reference to the singular includes the plural and vice versa and references to any gender includes both genders.
- 2.5 References to a person includes any individual, firm, unincorporated association or body corporate.
- 2.6 The headings in this Framework Agreement are included for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.
- 2.7 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.
- 2.8 A reference to specific standards, codes of practice, guidelines, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes.

2A AUTHORISING AGREEMENTS

- 2A.1 The Client may, without the consent of the Service Providers, grant Entities the right to enter into Call Off Contracts pursuant to this Framework Agreement by entering into an Authorising Agreement with the particular Entity.
- 2A.2 The Client shall provide the Service Providers with written notification of any Entities it enters into Authorising Agreements with pursuant to Clause 2A.1 within fifteen (15) Working Days of the date of the Authorising Agreement.

3. COMMENCEMENT, APPOINTMENT AND DURATION

- 3.1 Each Service Provider's appointment shall be governed by this Framework Agreement and any relevant Call Off Contract. Each Service Provider shall when requested by the Client or an Authorised Entity following the selection process set out in Clause 5, enter into a Call Off Contract for the carrying out of the relevant Services.
- 3.2 Subject to earlier termination in accordance with its terms, this Framework Agreement shall commence on the Commencement Date and shall continue until the Expiry Date.
- 3.3 Notwithstanding any other provision of this Framework Agreement to the contrary, neither the Client nor any Authorised Entity is obliged to enter into any Call Off Contracts with any Service Provider during the Framework Term and neither the Client nor any Authorised Entity shall be liable for any loss of profits, loss of contracts or other costs or losses suffered or incurred by a Service Provider as a result of that Service Provider not being awarded one or more Call Off Contracts during the Framework Term.

4. FRAMEWORK OBJECTIVES

- 4.1 The Framework Objectives are as follows:
 - 4.1.1 team-working and consideration for others, including quality and diversity considerations where

- appropriate;
- 4.1.2 to engage in alliancing with the Client and Authorised Entities as and when agreed;
- 4.1.3 improvements in environmental performance, sustainability and reductions in environmental impact;
- 4.1.4 to actively promote the Framework Agreement to the market and potential users;
- 4.1.5 high levels of resident satisfaction;
- 4.1.6 the development and implementation of training programs, apprenticeships and community initiatives;
- 4.1.7 supporting local sustainability and community initiatives;
- 4.1.8 the avoidance of disputes;
- 4.1.9 the timely and fair payment of all suppliers and sub-contractors by the Service Providers;
- 4.1.10 the Client's and the Authorised Entities' satisfaction with the performance of the Service Providers;
- 4.1.11 to work in a spirit of continuous improvement to continually improve value for money, quality and best value;
- 4.1.12 to consider and adopt any efficiency initiatives the Client or any Authorised Entities may bring to the attention of Service Providers and to apply the methodology of value engineering; and
- 4.1.13 to embrace and put forward new technologies, products and practices in the provision of the Services.

5. SELECTION AND APPOINTMENT OF SERVICE PROVIDERS TO CARRY OUT CALL OFF CONTRACTS

5.1 – 5.5 not used in this framework

Mini-Competition

- 5.6 If the Client or an Authorised Entity wishes to award a Call Off Contract by way of a Mini-Competition, the Client or the Authorised Entity shall identify the Service Providers appointed to the relevant Framework Lot who are capable of carrying out the particular Call Off Contract (excluding any Service Provider(s) that are suspended from participating in the Award Process pursuant to Clause 5.17, 7.9 or 27.9) and shall invite those Service Providers to take part in a Mini-Competition.
- 5.7 Each Service Provider acknowledges that the Client or the Authorised Entity may apply the Capability Criteria to determine which Service Providers are capable of carrying out the Call Off Contract for the purposes of Clause 5.6, and are therefore to be invited to participate in the Mini-Competition.
- 5.8 The invitation to take part in a Mini-Competition shall:
 - 5.8.1 be issued in writing;
 - 5.8.2 explain whether the Mini-Competition is to comprise of written tender / selection proposals by the Service Providers, site visits, interviews or presentations or a combination of any of these things;
 - 5.8.3 where the Mini-Competition is to involve the submission of written tender proposals by the Service Providers, specify a fixed time limit for submission of such proposals, such time limit being of sufficient duration to allow proposals to be submitted, taking into account factors such as the complexity of the Services in question, the nature of the Client's or the Authorised Entity's requirements and the time needed to compile and submit proposals;
 - 5.8.4 set out the evaluation criteria on which tenders submitted pursuant to the Mini-Competition will be assessed, which shall be based on the Mini-Competition Evaluation Criteria set out in Schedule 4 with such amendments as the Client or the Authorised Entity may stipulate to reflect

the requirements of the Call Off Contract in question; and

- 5.8.5 contain a copy of the form of Call Off Contract that will be entered into with the successful Service Provider.
- 5.9 When invited by the Client or an Authorised Entity to participate in a Mini-Competition, the Service Provider shall provide written confirmation to the party carrying out the tender as to whether or not it wishes to participate.
- 5.10 Each Service Provider shall be responsible for any costs it incurs in participating in a Mini-Competition and acknowledges and agrees that neither the Client nor any Authorised Entity shall have any liability for such costs under any circumstances.
- 5.11 The Mini-Competition will be assessed on the basis of the evaluation criteria set out in the invitation and all Service Providers participate in the Mini-Competition will be informed of the outcome of that evaluation.

Issue of a Call Off Contract

- 5.12 As soon as possible following any selection of a Service Provider whether by Mini-competition, the Client or the Authorised Entity shall issue a Call Off Contract to the successful Service Provider.
- 5.13 Upon the issue of any Call Off Contract, the Service Provider shall execute and return the relevant Call Off Contract to the Client or the Authorised Entity within ten (10) Working Days of receipt of the same or such longer period as the Client or the Authorised Entity may specify.
- 5.14 Should the Service Provider fail to comply with its obligation in Clause 5.13 above, the Service Provider shall be deemed to have declined the offer to enter into the Call Off Contract and the Client or the Authorised Entity may recommence the selection process under this Clause 5.
- 5.15 Once appointed to carry out Services under a Call Off Contract, the Service Provider shall carry out those Services in accordance with the terms of the Call Off Contract.

Inconsistency between terms of a Call Off Contract and this Framework Agreement

- 5.16 The terms of this Framework Agreement will supplement and complement the terms of any Call Off Contract. However, in the event of any conflict or discrepancy between the terms of a Call Off Contract and the terms of this Framework Agreement the terms of the relevant Call Off Contract will prevail.

Suspension from Award Process due to financial standing concerns

- 5.17 If at any time during the Framework Term:

5.17.1 a Service Provider's Creditsafe score is less than 30; and/or

5.17.2 any aspect of the Service Provider's financial standing falls below the minimum levels and requirements set out in the selection questionnaire for the Framework Agreement;

the Client may issue the Service Provider with a notice (a "**Suspension Notice**") confirming that the Service Provider shall be suspended from participating in the Award Process until such time as:

5.17.3 the Service Provider regains a Creditsafe score of 30 or above and/or the relevant aspect(s) of its financial standing has been restored to a level which meet the minimum levels and requirements set out in the selection questionnaire for the Framework Agreement; or

5.17.4 the Service Provider is able to demonstrate to the Client's reasonable satisfaction via other means that it is of sufficient financial standing to carry out the Services that may be required if it under this Framework Agreement, notwithstanding the fact that it has a Creditsafe score of less than 30 and/or an aspect of its financial is below the minimum levels and requirements set out in the selection questionnaire,

and the Service Provider shall be so suspended.

6. PRICE

6.1 The price payable to Service Providers for the carrying out of Services pursuant to Call Off Contracts will be calculated by reference to the rates and prices set out in the particular Service Provider's Pricing Submission subject to:

6.1.1 any refinements that are necessary to reflect the particular requirements of the Call Off Contract in question; and/or

6.1.2 any reduction that may be offered and agreed pursuant to a Mini-Competition

7. PERFORMANCE REVIEW

Call Off Contract Annual Review

7.1 The Client shall undertake an annual review of each Service Provider's performance under each Call Off Contract awarded to the particular Service Provider under this Framework Agreement in accordance with and subject to the remaining provisions of this Clause 7 (a "**Call Off Contract Annual Review**").

7.2 The Client will not undertake a Call Off Contract Annual Review in respect of a Call Off Contract if:

7.2.1 the relevant Authorised Entity has confirmed that it does not want the review to take place; and/or

7.2.2 the Framework Term has expired (or is due to expire) prior to the date of the proposed review.

7.3 The purpose of each Call Off Contract Annual Review shall be to review the particular Service Provider's performance under the relevant Call Off Contract against the Framework Quality Commitments in the immediately preceding twelve (12) month period. Each annual review shall be attended by representatives of the Client, the Service Provider and the Authorised Entity in question.

7.4 Each Service Provider shall provide the Client with such assistance and information as it may reasonably require to enable it to carry out a Call Off Contract Annual Review pursuant to Clause 7.3.

7.5 Without limitation to the generality of Clause 7.4, each Service Provider shall provide the Client and the relevant Authorised Entity with details of its performance against the Framework Quality Commitments in the previous twelve (12) months by no later than ten (10) Working Days prior to the date of the Call Off Contract Annual Review, together with such information as the Client may reasonably require in connection with the same.

7.6 If it is determined by the Client (acting reasonably) at a Call Off Contract Annual Review that the Service Provider has failed to achieve one or more of the Framework Quality Commitments in the period to which the review relates the Client shall issue the Service Provider with a notice containing details of such failure(s) within ten (10) Working Days of the date of the review (such notice be copied to relevant Authorised Entity).

- 7.7 The Service Provider shall, within ten (10) Working Days of the date of the notice given under Clause 7.6, issue to the Client and the Authorised Entity its proposals for how intends to rectify the failures set out in the notice within a three (3) month period (or a shorter period, as reasonably determined by the Client) from the date of the Call Off Contract Annual Review (the “**Action Plan**”).
- 7.8 The Client and the Service Provider acknowledge that the Authorised Entity shall monitor the Service Provider’s compliance with the Action Plan and shall provide the Service Provider and the Client with a report in relation to the same within three (3) months of the date of the relevant Call Off Contract Annual Review. The Service Provider shall promptly provide the Authorised Entity with such information and assistance as the Authorised Entity may reasonably require to enable it to monitor the Service Provider’s compliance with the Action Plan and prepare the report referred to in this Clause 7.8.
- 7.9 If the report referred to in Clause 7.8 shows that the Service Provider has failed to comply with the Action Plan (and such failure was not caused directly by the Authorised Entity), the Client may issue the Service Provider with a notice (a “**Suspension Notice**”) which shall:
- 7.9.1 specify the failure(s) in question;
 - 7.9.2 set out the timescale within which the Service Provider is required to rectify the failure(s); and
 - 7.9.3 confirm that the Service Provider shall be suspended from participating in the Award Process until such time as the Service Provider has rectified the failure(s) to the Client’s and the Authorised Entity’s reasonable satisfaction,
- and the Service Provider shall be so suspended.
- 7.10 If the Service Provider remedies the failure(s) set out in the Suspension Notice to the Client’s and the Authorised Entity’s reasonable satisfaction within the timescales set out in the Suspension Notice, the Suspension Notice shall be lifted.
- 7.11 If the Service Provider fails to remedy the failure(s) set out in the Suspension Notice to the Client’s and the Authorised Entity’s reasonable satisfaction within the timescales set out in the Suspension Notice (and such failure was not caused directly by the Authorised Entity), the Client may either, in its absolute discretion:
- 7.11.1 grant the Service Provider an additional period of time to remedy the failure(s) in question; or
 - 7.11.2 terminate the Service Provider’s appointment to this Framework Agreement by notice in writing having immediate effect.
- 7.12 The provisions of Clauses 7.10 and 7.11 shall apply (*mutatis mutandis*) in respect of any additional period of time the Service Provider is given to remedy the failure(s) in question under Clause 7.11.1.

8. CONTINUOUS IMPROVEMENT AND CO-OPERATION

Commitment to seek Continuous Improvement

- 8.1 The Service Providers shall, throughout the Framework Term, look for and seek to achieve continuous improvement in the quality and carrying out of the Services.
- 8.2 The Client, Authorised Entities and the Service Providers shall consider and seek to agree such incentives, additional to those described in this Framework Agreement, as may be appropriate to

encourage the Service Providers to maximise their efforts pursuant to this Framework Agreement and any Call Off Contract.

Meetings and Annual Review Forum

8.3 The Service Providers shall attend all meetings as may be necessary for the proper carrying out of the Call Off Contracts.

8.4 Without prejudice to the generality of Clause 8.3, twelve (12) months after the Commencement Date and every twelve (12) months thereafter until the end of the Framework Term, the Client may convene a meeting with such other Authorised Entities and such Service Providers as the Client may specify by giving such persons not less than five (5) Working Days' notice in writing to:

8.4.1 share experience and lessons learnt from completed Call Off Contracts;

8.4.2 identify areas of success or areas for improvement in the successful carrying out of the Services and the achievement of the Framework Objectives;

8.4.3 share knowledge and experience in the pursuit of continuous improvement of the Services; and

8.4.4 publish details of each workload of each Service Provider to ensure transparency of information.

No Delay

8.5 In all matters relating to the Services, including without limitation any required notice, request, submission, decision, consent, approval, comment, valuation, agreement, opinion, instruction and other communication and activity the Service Providers shall act reasonably and without delay.

9. INFORMATION SHARING

9.1 Subject to Clause 9.2, if a Service Provider has in its possession any knowledge or information that is or would be of assistance to the Client or an Authorised Entity in connection with a Call Off Contract, then the Service Provider shall promptly volunteer and share such knowledge or information with the Client or Authorised Entity without the need to be asked for such knowledge or information and irrespective of whether the Service Provider is contractually obliged to share such knowledge or information under any Call Off Contract that may have been entered into pursuant to this Framework Agreement.

9.2 A Service Provider shall not be required to volunteer or share knowledge or information pursuant to Clause 9.1 which the Service Provider is legally and/or contractually prohibited from disclosing.

10. SUPPLY CHAIN MANAGEMENT

10.1 The Service Providers shall in carrying out their obligations under this Framework Agreement and any Call Off Contract:

10.1.1 adhere to and cooperate in achieving the Framework Objectives;

10.1.2 use their reasonable endeavours to ensure that all members of their respective Supply Chains adhere to and cooperate in achieving the Framework Objectives; and

10.1.3 work cooperatively with the members of the Client's and the Authorised Entities' Supply Chains with a view to achieving the Framework Objectives.

11. HEALTH AND SAFETY

The Client, the Authorised Entities and the Service Providers shall work together and individually within their agreed roles, responsibilities and expertise and in accordance with this Framework Agreement to achieve the highest possible standards of health and safety in all activities forming part of the Services.

12. GENERAL OBLIGATIONS & WARRANTIES

12.1 Each Service Provider warrants (and where relevant undertakes) to the Client that:

12.1.1 it has full power and authority and all necessary consents to enter into and to perform its obligations under this Framework Agreement and any other agreements to which it is a party and which are to be entered into under or in connection with this Framework Agreement;

12.1.2 no litigation, arbitration, adjudication, dispute or administrative proceeding has been commenced, is pending or to its knowledge is threatened against the Service Provider, and no judgment or award has been given or made or is pending against it, which:

(i) in any way questions its power or authority to enter into or perform its obligations under this Framework Agreement or any other agreements to which it is a party and which are to be entered into under or in connection with this Framework Agreement; or

(ii) may have a material adverse effect on its ability to perform its obligations under this Framework Agreement or any other agreements to which it is a party and which are to be entered into under or in connection with this Framework Agreement;

12.1.3 all information, representations and other matters of fact communicated in writing to the Client or to its agents, advisers or employees, by or on behalf of the Service Provider, in its selection questionnaire or tender submission for the Framework Agreement, or otherwise in respect of this Framework Agreement, were when given and remain, as at the date of this Framework Agreement, true, complete and accurate in all material respects (save to the extent that they have been superseded by subsequent communications in writing to the Client or the relevant agents, advisers or employees); and

12.1.4 every consent, authorisation, certificate, licence, or approval of, or registration with, or declaration to, any Relevant Authority required to authorise, or required in connection with the execution, delivery, validity, enforceability or admissibility in evidence of, this Framework Agreement or the performance by the Service Provider of its obligations under this Framework Agreement has been or will within any applicable period be obtained or made and is, or will when obtained be, in full force and effect, and there has been no material default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of them.

12.2 The rights and remedies of the Client in relation to any misrepresentation or breach of warranty (or other provision of this Framework Agreement) on the part of the Service Provider shall not be prejudiced by any investigation by or on behalf of the Client into the affairs of the Service Provider, by the performance of this Framework Agreement or by any other act or thing which may be done or omitted to be done by the Client under this Framework Agreement and which would or might, but for this Clause 12.2, prejudice such rights and remedies.

13. ASSIGNMENT AND SUBCONTRACTING

13.1 The rights of the Service Providers under this Framework Agreement are personal and the Service Providers shall not, without the prior written consent of the Client, assign, transfer or subcontract any

rights and/or obligations under this Framework Agreement to any party.

- 13.2 The Client and Authorised Entities may at any time assign, novate, charge or transfer their interest in this Framework Agreement and/or any rights arising under it to any party on written notice to the Service Providers without the consent of the Service Providers being required. The Service Providers shall enter into all necessary documentation to give effect to such assignment, novation, charge or transfer.

14. TERMINATION

The Client's Right to Terminate

- 14.1 If a Service Provider:

14.1.1 commits a material breach of the terms of this Framework Agreement or any Call Off Contract;
or

14.1.2 ceases to carry on its business, becomes insolvent, or has a liquidator, trustee in bankruptcy, receiver, manager, administrator or administrative receiver appointed in respect of its assets or (where the Service Provider is a partnership) those of any partner of the firm, or suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident; or

14.1.3 becomes Controlled by a person or persons which do not Control it at the date of this Framework Agreement; or

14.1.4 becomes a Subsidiary of a body of which it is not a Subsidiary at the date of this Framework Agreement,

the Client may terminate the appointment of the Service Provider under one or more Framework Lots by notice in writing having immediate effect.

- 14.2 Without affecting any other right or remedy available to it, the Client may terminate a Service Provider's appointment under one or more Framework Lots at any time, by giving written notice of termination to the Service Provider, that termination taking effect on the date of receipt of notice by the Service Provider or any later date as may be specified in the notice, if:

14.2.1 this Framework Agreement has been subject to a substantial modification for the purposes of regulation 72 of the Public Contracts Regulations 2015 (the "**PCR 2015**") which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR 2015;

14.2.2 the Service Provider has, at the Commencement Date, been in one of the situations referred to in regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2) of the PCR 2015, and should therefore have been excluded from the procurement procedure for this Framework Agreement; or

14.2.3 this Framework Agreement should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaty on European Union, the Treaty on the Functioning of the European Union ("**TFEU**") and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

Service Provider's Right to Terminate

- 14.3 A Service Provider may terminate its appointment under one or more Framework Lots following any

breach of this Framework Agreement by the Client (other than a breach which is notified to, and remedied by the Client within fifteen (15) Working Days of the notice), or in the event of the Client ceasing to carry on its business.

General

- 14.4 The termination of a Service Provider's appointment under one or more Framework Lots shall not automatically terminate any Call Off Contract entered into at or before the date of termination unless the reason for termination is also a ground for the termination of any such Call Off Contract.
- 14.5 Termination of the appointment of a Service Provider under one or more Framework Lots shall not affect the mutual rights and obligations of the relevant parties accrued at the date of termination and the ongoing rights and obligations of such parties as stated in this Framework Agreement.
- 14.6 Any Call Off Contract entered into during the Framework Term shall continue in full force and effect until its respective termination date, notwithstanding the termination or expiry of this Framework Agreement.
- 14.7 For the avoidance of doubt, the termination of a Service Provider's appointment under one Framework Lot shall not automatically terminate that Service Provider's appointment under any other Framework Lot unless expressly provided otherwise.

Obligations on Termination or Expiry

- 14.8 On termination or expiry of this Framework Agreement, the Client, the Authorised Entities and the relevant Service Provider(s) shall promptly:
 - 14.8.1 return to the other relevant parties all documents and materials (and any copies) containing such parties' confidential information;
 - 14.8.2 erase all the other relevant parties' confidential information from its computer systems (to the extent possible); and
 - 14.8.3 on request, certify in writing to the other relevant parties that it has complied with the requirements of this Clause 14.8.

15. PROBLEM SOLVING, DISPUTE AVOIDANCE AND RESOLUTION

- 15.1 As soon as a Service Provider, the Client or an Authorised Entity is aware of any difference or dispute with another arising out of, or in connection with, this Framework Agreement which does not fall to be dealt with under a Call Off Contract, they shall give notice to the other relevant party.
- 15.2 The relevant parties will endeavour to resolve any difference or dispute by direct negotiation in good faith and each such party will give serious consideration to a request by the other to refer a difference or dispute to mediation.
- 15.3 If any difference or dispute is not resolved in accordance with Clause 15.2 and provided that neither party has by reason of that difference or dispute exercised a right of termination under Clause 14, then such dispute may be referred to conciliation or to mediation or to any other form of alternative dispute resolution as the parties may agree.
- 15.4 The procedures under Clause 15.1, 15.2 and 15.3 are without prejudice to a party's right to refer any difference or dispute to adjudication.
- 15.5 Any difference or dispute may be referred by a party to the courts of England and Wales.

16. NOTICES

- 16.1 Any notice, request, instruction or other documentation to be given under this Framework Agreement shall be delivered or sent by first class post or by fax or electronic mail to the address of the recipient party set out in this Framework Agreement (or to such other address as that party may have notified the other relevant party for this purpose) and any such notice or other document shall be deemed to have been served, (if delivered) at the time of delivery or (if sent by post) upon the expiration of 48 hours after posting and (if sent by fax or electronic mail) upon transmission unless a notice of non-delivery is received within 2 hours after transmission.

17. FREEDOM OF INFORMATION

- 17.1 The Service Providers acknowledge that the Client and the Authorised Entities may be subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Client or the Authorised Entity concerned to enable it to comply with its information disclosure obligations.
- 17.2 Each Service Provider shall and shall procure that its sub-contractors shall:
- 17.2.1 transfer to the Client or the Authorised Entity all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- 17.2.2 provide the Client or the Authorised Entity with a copy of all Information in its possession, or power in the form that the Client or the Authorised Entity requires within five (5) Working Days (or such other period as the Client or the Authorised Entity may specify) of the Client's or the Authorised Entity's request; and
- 17.2.3 provide all necessary assistance as is reasonably requested by the Client or the Authorised Entity to enable the Client or the Authorised Entity to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 17.3 the Client or the Authorised Entity concerned shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 17.4 In no event shall a Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Client or the relevant Authorised Entity.
- 17.5 Each Service Provider acknowledges that the Client and the Authorised Entities may, acting in accordance with the relevant codes of practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Service Provider or despite having taken the Service Provider's views into account.
- 17.6 Each Service Provider shall ensure that all Information is retained for disclosure and shall permit the Client and the Authorised Entities to inspect such records as requested from time to time.

18. CONFIDENTIALITY

- 18.1 Subject to Clauses 9 and 17, the Client and the Service Providers shall keep secret and not disclose and shall procure that their employees and any subcontractors keep secret and do not disclose any

information of a confidential nature obtained by them by reason of this Framework Agreement. This obligation shall not apply to information:

18.1.1 which is in the public domain or is trivial or cannot reasonably be considered to be confidential;
or

18.1.2 which the Client is required to disclose as a matter of law or in discharge of its obligations of public accountability and freedom of information.

18.2 The Service Providers agree that the Client may supply information to the Authorised Entities who wish, or may wish to enter into a Call Off Contract with a Service Provider.

18.3 Each Service Provider undertakes to make no reference in any advertising or other promotional material to this Framework Agreement without the prior written consent of the Client.

19. NO AGENCY, PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Framework Agreement shall be construed as creating an agency, partnership or joint venture relationship between the Service Providers, the Client and the Authorised Entities.

20. APPLICABLE LAW

This Framework Agreement shall be governed by the laws of England and Wales and shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.

21. SEVERANCE

21.1 Any Clause or provision of this Framework Agreement which is held to be illegal or unenforceable (in whole or in part) under any enactment or rule of law shall no longer form part of this Framework Agreement.

21.2 In the event that a Clause or provision (or part of a Clause or part of a provision) is excluded under Clause 21.1 above the validity and enforceability of the remainder of this Framework Agreement shall not be affected.

22. SURVIVAL OF CERTAIN CLAUSES

The provisions of Clauses 2, 17, 18, 20, 21, 24 and 27 (and without limitation to the foregoing, any other provision of this Framework Agreement which by its terms is to be performed or observed notwithstanding termination or expiry, or which is either expressed to, or by implication is intended to survive termination or expiry) shall survive the termination or expiry of this Framework Agreement.

23. COUNTERPARTS

This Framework Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

24. DATA PROTECTION

To the extent that compliance with this Framework Agreement involves a Service Provider processing personal data (such terms having the meanings given in the relevant Data Protection Legislation) that Service Provider shall comply with the relevant Data Protection Legislation in relation to that personal data.

25. TRAINING

The Service Providers shall participate fully with the Client and the Authorised Entities in developing training programmes, packages and other associated employment related projects and, where applicable, in securing grants to support these initiatives.

26. RESIDENT CONSULTATION

The Service Providers shall in relation to this Framework Agreement and any Call Off Contract when requested by the Client or an Authorised Entity, provide such information, co-operation and assistance as the Client or Authorised Entity may require to meet the Client's or the Authorised Entity's obligations under section 20 of the Landlord and Tenant Act 1985 and other related legislation.

27. SEC FEES

27.1 Each Service Provider shall pay to the Client the SEC Fees payable in respect of each Call Off Contract awarded to it under this Framework Agreement in accordance with the provisions of this Clause 27.1:

Notification of Projected Value of a Call Off Contract

27.1.1 Within five (5) Working Days of the commencement date of a Call Off Contract awarded to a Service Provider under this Framework Agreement, the Client shall provide the Service Provider with a notification which confirms the following:

- (i) the projected total value of the Call Off Contract and the projected monthly value of such Call Off Contract, in both cases excluding VAT. For the avoidance of doubt, the projected monthly value for this purpose shall be an amount equal to the total projected value divided by the number of months that the Call Off Contract is due to last for, disregarding the effect of any proposed retention (the "**Projected Monthly Value**");
- (ii) the "**First SEC Fee Date**" for the Call Off Contract which shall be the last day of the month following the commencement date of the Call Off Contract, or such other date as the Client may specify;

By way of example, if the commencement date of a Call Off Contract is 27 January the First SEC Fee Date shall be 28 February.

- (iii) the "**Subsequent SEC Fee Date**" for the Call Off Contract, which shall be the last day of each subsequent month; and

By way of example, if the First SEC Fee Date for the Call Off Contract is 28 February, the Subsequent SEC Fee Date shall be 31 March, 30 April and so on

- (iv) whether the Authorised Entity that has awarded the Call Off Contract is a full member or a guest member of SEC and, accordingly, the Relevant Fee Percentage that applies to that Call Off Contract.

Payment of SEC Fees due in respect of each Call Off Contract

27.1.2 Within five (5) Working Days of:

- (i) the First SEC Fee Date for the Call Off Contract; and
- (ii) each Subsequent SEC Fee Date for the Call Off Contract

the Service Provider shall provide the Client with confirmation of the total amount invoiced by the Service Provider to the Authorised Entity pursuant to the terms of the Call Off Contract in the month immediately preceding the First SEC Fee Date or relevant Subsequent SEC Fee Date (as appropriate) (excluding any payments made in respect of VAT) (the “**Actual Monthly Amount**”), together with a copy of the relevant invoices and payment notices and such other information as the Client may require in connection with the same;

27.1.3 Within ten (10) Working Days of receipt of the confirmation and information referred to in Clause 27.1.2, the Client shall submit an invoice to the Service Provider for a fee equal to:

the Actual Monthly Amount for the month in question multiplied by the Relevant Fee Percentage,

and the Service Provider shall pay the fee stated in such invoice within thirty (30) calendar days of the date of the invoice;

27.1.4 In the event that the Service Provider fails to comply with its obligation under Clause 27.1.2 in relation to a particular month the Client shall, without prejudice to Clauses 27.1.5 and 27.1.6, be entitled to submit an invoice to the Service Provider for a fee equal to:

the Projected Monthly Value of the Call Off Contract multiplied by the Relevant Fee Percentage,

and the Service Provider shall pay the fee stated in such invoice within thirty (30) calendar days of the date of the invoice;

27.1.5 In the event that it transpires that the Actual Monthly Amount for the month in question was higher than the Projected Monthly Value of the Call Off Contract, the Client shall be entitled to submit an invoice to the Service Provider for a fee equal to:

the difference between those amounts multiplied by the Relevant Fee Percentage, plus interest on such fee at a rate of 2% above the Bank of England base rate from time to time,

and the Service Provider shall pay the amount stated in such invoice within thirty (30) calendar days of the date of the invoice;

27.1.6 For the avoidance of doubt, in the event that it transpires that the Actual Monthly Amount for the month in question was lower than the Projected Monthly Value of the Call Off Contract, the Service Provider shall not be entitled to reimbursement of any amount it has paid pursuant to Clause 27.1.4 or to any reduction in the amount of any invoice submitted by the Client under that Clause, nor shall it give the Service Provider any entitlement to exercise a right of set off in respect of any other invoices issued by the Client under this Clause 27.

27.1.7 The Client reserves the right to contact the Authorised Entity to verify the accuracy of any information and amounts provided by the Service Provider under Clause 27.1.2. This may

include obtaining copies of the payment notices, or any other confirmation, from the Authorised Entity. If the information obtained from the Authorised Entity differs from the information and amounts provided by the Service Provider under Clause 27.1.2 then the Client may use the information provided by the Authorised Entity to submit an invoice to the Service Provider pursuant to Clause 27.1.5.

General

- 27.2 If a Service Provider fails to make any payment of any invoice which (in accordance with the provisions of this Clause 27) is due in full on the due date the Client may charge that Service Provider interest (both before and after judgement) on the amount unpaid from time to time at the rate of 2% above the Bank of England base rate from time to time.

Note:

The interest charge is calculated by dividing the number of days the payment is late by 365, and then multiplying the resulting figure by the interest rate and the amount of the invoice.

By way of example:

*The Service Provider is 20 days late in paying an invoice of £5,000 (inclusive of VAT).
The relevant interest rate is 2.75% (being 2% above the Bank of England Base rate).
The interest charge is £7.53 for the 20 day period. i.e.:*

$$\begin{aligned} 20/365 &= 0.054 \\ 0.054 \times 2.75\% &= 0.0015 \\ 0.0015 \times 5000 &= \text{£}7.53. \end{aligned}$$

- 27.3 The Client shall be entitled to recover from a Service Provider any administrative and legal costs it incurs in taking steps to recover any late or unpaid SEC Fees from that Service Provider under this Clause 27.
- 27.4 All SEC Fees due under this Clause 27 are exclusive of VAT. If any VAT is payable on such fees the Service Provider shall, on receipt of a valid VAT invoice from the Client, pay to the Client such additional amounts in respect of VAT as are payable.
- 27.5 Each Service Provider acknowledges and agrees that it collects as agent for the Client and holds on trust for the Client any monies received from the Authorised Entities which comprise any part of the SEC Fees payable to the Client pursuant to the provisions of this Clause 27.
- 27.6 For the avoidance of doubt (and without limitation to any other provision of this Framework Agreement), a breach of any provision of this Clause 27 by a Service Provider shall constitute a material breach of the provisions of this Framework Agreement by that Service Provider for the purposes of Clause 14 of this Framework Agreement.

Suspension from Award Process for failure to pay SEC Fees

- 27.8 If a Service Provider fails to make payment of any invoice submitted by the Client under this Clause 27 within one hundred and twenty (120) calendar days of the date of the invoice, the Client may issue a notice to the Service Provider (a “**Warning Notice**”) which shall state that the Service Provider may be suspended from participating in the Award Process under the

Framework Agreement if the invoice has not been paid in full by the date that is ninety (90) calendar days from the date of the invoice.

- 27.9 If, notwithstanding the issue of the Warning Notice pursuant to Clause 27.8, the Service Provider fails to make payment of the invoice by the date that is one hundred and eighty (180) days from the date of the invoice the Client may issue the Service Provider with a notice (a “**Suspension Notice**”) confirming that the Service Provider shall be suspended from participating in the Award Process until such time as the Service Provider has paid the invoice in full, together with any interest and other costs payable in accordance with Clauses 27.2 and 27.3, and the Service Provider shall be so suspended.

IN WITNESS whereof the Service Providers and the Client have entered into this Framework Agreement on the day in the year first before written

Executed by **OPTIVO**)
acting by:)

.....
Authorised Signatory

.....
Authorised Signatory

Executed by)
acting by:)

.....
Director

.....
Director/Secretary

SCHEDULE 1

FRAMEWORK LOT

Note to bidders: This Schedule will be populated with the details of the successful Service Providers

Lot 1a – New Build Projects - £0 - £4,999,999 in Kent, Sussex & Surrey

SERVICE PROVIDER'S NAME	REGISTERED ADDRESS	COMPANY NUMBER	SERVICE PROVIDER'S LOT RANKING

Lot 1b – New Build Projects £0 - £4,999,999 in London (Within the M25 Boundaries)

SERVICE PROVIDER'S NAME	REGISTERED ADDRESS	COMPANY NUMBER	SERVICE PROVIDER'S LOT RANKING

Lot 1c – New Build Projects - £0 - £4,999,999 in the rest of the UK

SERVICE PROVIDER'S NAME	REGISTERED ADDRESS	COMPANY NUMBER	SERVICE PROVIDER'S LOT RANKING

Lot 2a – New Build Projects - £5,000,000 - £9,999,999 in Kent, Sussex & Surrey

SERVICE PROVIDER'S NAME	REGISTERED ADDRESS	COMPANY NUMBER	SERVICE PROVIDER'S LOT RANKING

Lot 2b – New Build Projects £5,000,000 - £9,999,999 in London (Within the M25 Boundaries)

SERVICE PROVIDER'S NAME	REGISTERED ADDRESS	COMPANY NUMBER	SERVICE PROVIDER'S LOT RANKING

Lot 2c – New Build Projects - £5,000,000 - £9,999,999 and above in the rest of the UK

SERVICE PROVIDER'S NAME	REGISTERED ADDRESS	COMPANY NUMBER	SERVICE PROVIDER'S LOT RANKING

Lot 3a – New Build Projects - £10,000,000 - £19,999,999 and above in Kent, Sussex & Surrey

SERVICE PROVIDER'S NAME	REGISTERED ADDRESS	COMPANY NUMBER	SERVICE PROVIDER'S LOT RANKING

Lot 3b – New Build Projects £10,000,000 - £19,999,999 and above in London (Within the M25 Boundaries)

SERVICE PROVIDER'S NAME	REGISTERED ADDRESS	COMPANY NUMBER	SERVICE PROVIDER'S LOT RANKING

Lot 3c – New Build Projects - £10,000,000 - £19,999,999 and above in the rest of the UK

SERVICE PROVIDER'S NAME	REGISTERED ADDRESS	COMPANY NUMBER	SERVICE PROVIDER'S LOT RANKING

SCHEDULE 2

CALL OFF CONTRACT AMENDMENTS

Contract amendments will be available at the point of call off, if applicable.

SCHEDULE 3

CAPABILITY CRITERIA

1. The Capability Criteria may include:
 - The Service Provider's capability to carry out a project of the size and complexity of the proposed project;
 - The Service Provider's capability to carry out works in the locality of the proposed project;
 - The Service Provider's capability to carry out projects involving the type of work that the proposed project involves
 - The Service Provider's financial stability and standing;
 - The insurances held by the Service Provider;
 - The Service Provider's health and safety record;
 - The Service Provider's capacity, taking into account the value of Services already awarded to it under the Framework Agreement; and
 - The Service Provider's performance against Call Off Contract KPIs on current or previous Call Off Contracts awarded to it under the Framework Agreement;
2. The Service Providers acknowledge that in determining whether a Service Provider satisfies the Capability Criteria in respect of a particular Call Off Contract the Client or the Authorised Entity may have regard to:
 - a. the information provided by the Service Provider in its selection questionnaire or tender submission for a place on the Framework Agreement (the "**Tender Submission**");
 - b. any update of such information that the Service Provider provides pursuant to paragraph 3 of this Schedule 3; and
 - c. any other information or knowledge that the Client or the Authorised Entity holds about the Service Provider (whether obtained through market sources or otherwise), and which the Client or the Authorised Entity considers relevant.
3. On an annual basis during the Framework Term the Client may request the Service Provider to provide it with an updated version of the information the Service Provider provided in its Tender Submission in such format as the Client may reasonably specify. The Service Provider shall provide the Client with such information within five (5) Working Days of any request, or within such longer period as the Client may specify.
4. Each Service Provider agrees that the Client may provide Authorised Entities with the information the Service Provider provided in its Tender Submission (together with any update of such information that the Service Provider provides pursuant to paragraph 3 above) for the purposes of enabling the Authorised Entities to determine whether the Service Provider satisfies the Capability Criteria in respect of a particular Call Off Contract.

SCHEDULE 4

MINI-COMPETITION EVALUATION CRITERIA

The Client or the Authorised Entity making the call off will confirm to the Service Providers, in the invitation to take part in the Mini-Competition, the criteria that will be used to assess tenders that are submitted pursuant to the Mini-Competition. Such criteria will be based on the criteria set out in the table below, with such amendments as the Client or the Authorised Entity may stipulate to reflect the requirements of the Call Off Contract in question.

The percentage weightings given to the price and quality elements of the criteria will be confirmed by the Client or the Authorised Entity making the call off in the invitation to take part in the Mini-Competition. These weightings will be within the ranges set out in the table below. Accordingly, the Service Providers acknowledge that a Mini-Competition may be assessed on the basis of price alone, if the Client / Authorised Entity considers it appropriate.

Criteria	Criteria weighting
Qualitative criteria which may include the following: <ul style="list-style-type: none">- [conformity of the Service Provider's proposal with the Client's / the Authorised Entity's requirements;- relevant experience, qualifications and track record of the team proposed by the Service Provider;- the Service Provider's customer service proposals;- the Service Provider's proposed work method;- the Service Provider's health and safety proposals and proposals for workforce development;- the Service Provider's social value proposals;]	[0% to 80%]
The Service Providers' proposed price for carrying out the Call Off Contract	[20% to 100%]

SCHEDULE 5

AUTHORISING AGREEMENT

This is a document signed by the client when they use the framework for the first time. It shows they are signing up to use an OJEU compliant framework.