

DATED

1st April 2020

(1) THE ENVIRONMENT AGENCY

- and -

(2) IMES INTERNATIONAL.

FRAMEWORK AGREEMENT

relating to
the provision of Cableways Inspection and
Service 2020 – 24 (Lot 2 Midlands)

CONTENTS

1.	DEFINITIONS AND INTERPRETATIONS	1
2.	PURPOSE OF THE FRAMEWORK AGREEMENT	5
3.	SERVICE PROVIDER'S APPOINTMENT	5
4.	MUTUAL OBLIGATIONS	5
5.	TERM	6
6.	ORDERING PROCEDURES	6
7.	REMUNERATION	7
8.	PROVISION OF MANAGEMENT INFORMATION	7
9.	WARRANTIES AND REPRESENTATIONS	8
10.	MODERN SLAVERY	10
11.	ASSIGNMENT	10
12.	INSURANCE	10
13.	CLIENT REMEDIES	11
14.	TERMINATION	12
15.	CONFIDENTIALITY AND INFORMATION	12
16.	CONFLICTS OF INTEREST	14
17.	PUBLICITY AND BRANDING	14
20.	RIGHTS OF AUDIT, INSPECTION AND ACCESS	16
21.	NOTICES	17
22.	CUMULATIVE REMEDIES	17
23.	RELATIONSHIP OF THE PARTIES	17
24.	FURTHER ASSURANCE	17
25.	SEVERANCE	17
26.	THIRD PARTY RIGHTS	18
27.	VARIATION	18
28.	ENTIRE AGREEMENT	18
29.	COSTS	18
30.	COUNTERPARTS	18
31.	GOVERNING LAW AND JURISDICTION	18
	SCHEDULE 1: DEED OF APPOINTMENT	20
	SCHEDULE 2: AVAILABLE SERVICES AND CORE TEAM	19
	SCHEDULE 3: ORDERING PROCEDURE	20
	SCHEDULE 4: CHARGING STRUCTURE	26
	SCHEDULE 5: FRAMEWORK INSTRUCTION	28

THIS AGREEMENT is made on
2020

1st April 1st April

BETWEEN:

- (1) **THE ENVIRONMENT AGENCY** is a Non Departmental Public Body, sponsored by the Department for Environment, Food & Rural Affairs, established in 1996 following the enactment of the Environment Act 1995, whose registered office is at Horizon House, Deanery Rd, Bristol BS1 5AH ("**Client**");
- (2) **IMES INTERNATIONAL** Company number **SC540332** whose registered office is at Units 8 & 9 Technology Centre, Claymore Drive, Aberdeen. AB23 8GD. ("**Service Provider**").

WHEREAS:

- A The Client has procured a framework of Service Providers in relation to the provision of Mechanical and Electrical services for the Inspection and Servicing of Cableways in England. Cableways are used to measure open river current flow of water and generally used where it is not possible to carry out the activity safely by wading into the river.
- B On the basis of the Service Provider's tender and, in particular, the representations made by the Service Provider to the Client in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner, the Client selected the Service Provider to enter a framework arrangement along with a number of other suppliers to provide Available Services to the Client on a call-off basis or through mini competition in accordance with this agreement.
- C This agreement sets out the award and ordering procedure for Available Services which may be required by the Client, the main terms and conditions for any Framework Instruction which the Client may conclude and the obligations of the Service Provider.
- D The Client wishes to appoint the Service Provider to provide the Available Services in connection with future Framework Instructions and the Service Provider is willing to do so on the terms and conditions set out in this agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In this agreement the following words and expressions shall, where the context so admits, be deemed to have the following meanings:

"Available Services" means the Services set out in schedule 2 (*Available Services and Core Team*) which the Service Provider shall make available to the Client if requested;

"Background Information" has the meaning given to it in schedule 3 (*Ordering Procedure*);

"Change of Control" means, in respect of any corporate body, any change in the entity or entities having Control of that corporate body;

"Commencement Date" means the date of this agreement;

"Confidential Information" shall mean all information obtained by the Service Provider from or disclosed to the Service Provider by the Client, its subsidiary, associate or affiliate companies which is labelled or otherwise stated to be confidential, or can reasonably be assumed to be confidential;

"Service Provider's Personnel " means all persons employed by the Service Provider together with its servants, agents, suppliers and sub-contractors used in the performance of its obligations under this agreement and/or any Framework Instruction;

"Control" means the ability to control or direct, directly or indirectly, the board, executive body, decision making process or management of an entity by virtue of ownership, right of appointment, right to control election or appointment, voting rights or the ability to control the exercise of voting rights;

"Deed of Appointment" means the terms and conditions of the professional appointment an example of which is attached in schedule 1 which shall apply to each Framework Instruction;

"Direct Award" has the meaning given to it in schedule 3 (*Ordering Procedure*);

"Fee" means the amount payable to the Service Provider for the satisfactory performance of its obligations for a particular Project calculated in accordance with schedule 4 (*Charging Structure*) ,the Deed of Appointment and/or as set out in the relevant Framework Instruction;

"Framework" means the framework arrangements established by the Client's management department on or about the date of this agreement for the provision of professional Service Providers under various lots;

"Framework Service Providers" means the suppliers (including the Service Provider) appointed under this agreement or agreements on the same or similar terms to this agreement as part of the Framework;

"Framework Instruction" means the order issued by the Client to the Service Provider for a Project, which shall be issued in the form attached at schedule 5 setting out the details of the specific Project to be incorporated into the Deed of Appointment;

"Framework Scope" means any construction projects being or to be procured by the Client having an estimated capital cost of up to £50,000 ;

"Legislation" means insofar as the same may apply to the Services, all and any laws, by-laws, permissions, consents, codes, rules, directives, regulations, Acts or Parliament, orders, codes of practice and guidance, and any planning permission relating to the Project, as the same may be modified and amended from time to time during the term of this agreement;

"Management Information" has the meaning given to it in clause 8;

"Month" means a calendar month and "monthly" shall be interpreted accordingly;

"Order" means an order for Available Services placed by the Client on the Service Provider prior to issuing a Framework Instruction in accordance with the Ordering Procedures;

"Ordering Procedures" means the ordering and award procedures specified in clause 6 (Ordering Procedures) and schedule 3 (*Ordering Procedure*);

"Other Agreements" means the framework agreements substantially in the form of this agreement entered into between the Client and the other Framework Service Providers as part of the Framework;

"Party or parties" means the Client and/or the Service Provider;

"Prohibited Act" means:

- (a) offering, giving or agreeing to give to any servant of the Client any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the agreement; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this agreement;
- (b) entering into the agreement in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Client;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to the agreement; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Client;

"Regulations" means the Public Contracts Regulations 2015;

"Reporting Date" means the 15th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;

"Response Documentation" means the response to the selection questionnaire issued by the Client prior to the selection of the Framework Service Providers and the Service Provider's response to the invitation to tender for the Framework;

"Project" means any project or scheme which is within the Framework Scope from time to time and in respect of which services will be required to be procured by the Client from the Service Provider or any of the other Framework Service Providers pursuant to this agreement or any of the Other Agreements respectively during the Term;

"Services" means the Available Services to be performed by the Service Provider under the terms of any Framework Instruction, as may be expressly adjusted by the Framework Instruction for a particular Project;

"Services Requirements" means the requirements of the Client for the Available Services from time to time;

"Statement of Requirements" means a statement issued by the Client detailing its Services Requirement issued in accordance with the Ordering Procedure;

"Term" has the meaning given to it in clause 5.2; and

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

- 1.2 The interpretation and construction of this agreement shall be subject to the following provisions:
 - 1.2.1 The clause headings in this agreement are for the convenience of the parties only and do not affect its interpretation;
 - 1.2.2 Words importing the singular meaning include where the context so permits the plural meaning and vice versa;
 - 1.2.3 where the context so permits words denoting the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that manner;
 - 1.2.4 References to a clause or schedule are to a clause or schedule of this agreement;
 - 1.2.5 References to a paragraph are to a paragraph in the schedule to which the reference relates;
 - 1.2.6 Where the context permits the covenants and obligations of the persons comprising the Service Provider shall be joint and several;
 - 1.2.7 References to British Standards and other standards, codes of practice and similar documents shall be deemed to include references to the latest versions of such standards, etc.
 - 1.2.8 In the event and to the extent only of any conflict between the clauses and the remainder of the schedules, the clauses shall prevail over the remainder of the schedules;
 - 1.2.9 Where the context so requires and where the Service Provider is a partnership the term "Service Provider" shall be deemed to include all or any of its partners and any additional partner or partners who may be subsequently admitted into the partnership of the Service Provider. This agreement shall not automatically terminate upon the death or retirement of one or more members of such partnership; and
 - 1.2.10 Where Service Provider is a Limited Liability Partnership ("LLP") any reference that the Service Provider makes to members of the Service Provider as "Partners" is to their title within the LLP as senior professionals. The Client agrees that all dealings with persons within the Service Provider will be as a member or employee of the LLP, including any appointment of any member or employee of

the Service Provider to act as an expert or adjudicator or in any other personal capacity.

2. PURPOSE OF THE FRAMEWORK AGREEMENT

- 2.1 The purpose of this agreement is to govern the contractual position between the Client and the Service Provider in respect of any Available Services the Service Provider may be requested to perform or Services it performs for or on behalf of the Client or its agents or contractors and which may be instructed under this agreement.
- 2.2 The execution of this agreement shall neither oblige the Client to require performance of any Available Services by the Service Provider nor require the Client to enter into any Framework Instruction in favour of the Service Provider. The Client reserves all rights to employ any third party to provide some or all of the Services irrespective of whether or not they are a Framework Service Provider.
- 2.3 The Service Provider acknowledges and accepts that the Client does not give any assurance or guarantee as to the value, timing or sequence of the Framework Scope or any Project.
- 2.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Client in respect of the total quantities or values of the Services to be ordered by them pursuant to this agreement and the Service Provider acknowledges and agrees that it has not entered into this agreement on the basis of any such undertaking, statement, promise or representation.

3. SERVICE PROVIDER'S APPOINTMENT

- 3.1 The Client appoints the Service Provider as a potential provider of the Available Services and the Service Provider shall be eligible to be considered for the award of Framework Instructions for such Available Services by the Client during the Term.
- 3.2 The Service Provider agrees that the Client relies on the skill and judgment of the Service Provider in the supply of the Available Services and the performance of its obligations under this agreement and under any Framework Instruction.
- 3.3 The Service Provider has provided the Client with details of the core team of Service Provider's Personnel that will be available to the Client under this agreement and the details are set out in schedule 2 (*Available Services and Core Team*). The Service Provider shall use its best endeavours to make such individuals available for Framework Instructions.
- 3.4 The Service Provider shall co-operate with the Client in the continuous improvement of the supply of Available Services and its performance, including proactively suggesting process improvements, and shall undertake such improvement steps as may be agreed between the Service Provider and the Client from time to time to improve quality, efficiency, address issues or take advantage of technological and process developments relating to the supply of Available Services.

4. MUTUAL OBLIGATIONS

- 4.1 The Client and the Service Provider shall perform their respective obligations and commitments under this agreement with the object of achieving:

- 4.1.1 Innovation;

- 4.1.2 Cost efficiency;
- 4.1.3 Best value; and
- 4.1.4 Continuous improvement;
- 4.1.5 In the development, management and design of the Projects.
- 4.2 The Client and the Service Provider shall act in good faith to establish, develop and implement a partnering relationship to promote between them:
 - 4.2.1 Trust;
 - 4.2.2 Fairness;
 - 4.2.3 An understanding of each other's expectations and values;
 - 4.2.4 Dedication to common goals;
 - 4.2.5 Commitment to people, including staff, users of a Project and the wider community;
 - 4.2.6 Joint commitment to successful implementation of Projects;
 - 4.2.7 Shared problem solving; and
 - 4.2.8 Effective communication.
- 4.3 The Client and the Service Provider commit to developing systems between them to enable the exchange of knowhow and expertise.

5. TERM

- 5.1 This agreement will commence on the Commencement Date that being 1st April 2020.
- 5.2 Subject to earlier termination in accordance with clauses 13 and 14 this agreement shall terminate automatically without notice 4 years from the Commencement Date ("**Term**").

6. INSTRUCTION PROCEDURES

- 6.1 If the Client decides to source the Available Services through the Framework then it will award the Framework Instruction in accordance with schedule 3 (*Ordering Procedure*). The Client shall comply with the relevant provisions in schedule 3 (*Ordering Procedure*). Only the Client shall be entitled to order Available Services under this Framework.
- 6.2 In relation to any Framework Instructions, the Service Provider shall provide the Available Services for the category of Project referred to in the Framework Instruction upon and subject to the terms and conditions of this agreement and the Deed of Appointment. For the purposes of the relevant Project:
 - 6.2.1 "**Site**" shall mean the site specified in the Framework Instruction;
 - 6.2.2 "**Services**" shall mean the Available Services for the relevant category of Project (as may be altered by the relevant Framework Instruction);

- 6.2.3 Services shall be completed by the delivery dates specified in the Framework Instruction;
 - 6.2.4 the "**Programme**" and "**Brief**" shall mean the documents described as such for the particular Project to which the Framework Instruction relates, which shall be provided to the Service Provider;
 - 6.2.5 The "**Contractor**", the "**Construction Manager**" (where relevant) and the "**Design Team**" shall mean such parties as are notified separately to the Service Provider; and
 - 6.2.6 The Fee shall be the corresponding fee for the Available Services for the relevant category and value of Project or such other fee as specified in the Framework Instruction.
- 6.3 In the event of any conflict, ambiguity or discrepancy between the provisions of the relevant Framework Instruction and this agreement, such conflict, ambiguity or discrepancy shall be resolved in the following order of priority:
- 6.3.1 The provisions of the relevant Framework Instruction;
 - 6.3.2 The provisions of clauses 1 to 31 of this agreement;
 - 6.3.3 The Deed of Appointment.
- 6.4 Each Framework Instruction will be a separate contract between the parties and will be assignable and terminable independently of this agreement in accordance with the Deed of Appointment.

7. REMUNERATION

In consideration of the carrying out of the Services required by any Framework Instruction, the Client shall pay the Service Provider the Fee applicable to each such Framework instruction, which shall be calculated and payment made in accordance with the provisions of the schedule 4 (*Charging Structure*) and the Deed of Appointment, as amended by the relevant Framework Instruction or as tendered in accordance with the requirements of a further competition.

8. PROVISION OF MANAGEMENT INFORMATION

- 8.1 The Service Provider shall, at no charge to the Client, submit to the Client complete and accurate management information including Key Performance Indicators specified in this clause ("**Management Information**") in respect of each Month, in accordance with the provisions of this clause, on or by the Reporting Date. The Management Information shall be supplied in respect of each Framework Instruction entered into with the Client until the completion of such Framework Instruction, notwithstanding termination or expiry of this agreement.
- 8.2 The Client shall be entitled, but not obliged, to use the Management Information to make any decisions under or in relation to this agreement and the Framework Instruction.
- 8.3 The Service Provider must return the Client's template report each Month within 10 Working Days of the Month end in all cases, including where there has been no activity in the relevant

Month ("nil returns").The Service Provider must insert this Framework number, the Service Provider's name and the Month that the return relates to.

- 8.4 The Client shall provide guidance notes for completing the template report and shall update them from time to time. The template report should be completed by the Service Provider in accordance with the guidance notes. Some fields in the template report are mandatory and these fields will be highlighted in the guidance notes. Returns will not be accepted unless all mandatory fields have been completed by the Service Provider.
- 8.5 The template report should be used to report Framework Instructions received, progress of that instruction and invoices raised during the Month that is being reporting on, regardless of when the work was actually done. The Service Provider should also inform the Client of any corrections to previous Months' Management Information. No amendment should be made to the form of the template report without prior notification to an agreement by the Client.
- 8.6 Any errors or omissions may result in the return being rejected and may constitute a Consistent Failure for the purposes of this agreement.
- 8.7 The deadline for the return of the template is the Reporting Date provided for in this agreement. If a return has not been received by the deadline the Service Provider may be contacted by a member of the Client's data team. Should there be two (2) or more consecutive failures by the Service Provider to provide Management Information by the Reporting Date, the Client may exercise its rights in relation to a persistent failure as provided for under this agreement.
- 8.8 The Service Provider shall issue reports, and any other management information requested, in the relevant Framework.
- 8.9 When requested by the Client the Service Provider's principal point of contact with the Client and Client's principal point of contact with the Service Provider shall attend review meetings at a location and frequency to be agreed between the parties.

9. WARRANTIES AND REPRESENTATIONS

- 9.1 The Service Provider warrants represents and undertakes to the Client that:
 - 9.1.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this agreement and any Framework Instruction;
 - 9.1.2 this agreement is executed by a duly authorised representative of the Service Provider;
 - 9.1.3 all information, statements, warranties and representations contained in the Response Documentation and (unless otherwise agreed) any other document created by or on behalf of the Service Provider which resulted in the award of this agreement are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Client prior to the execution of this agreement and it will promptly advise the Client of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Response Documentation and (unless otherwise agreed) any other document created by or on behalf of the Service Provider which resulted in the award of this agreement shall be deemed

to be repeated by the Service Provider in this agreement with reference to the circumstances existing at the time that they are deemed to be repeated;

- 9.1.4 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework;
- 9.1.5 it has not caused or induced any person to enter such agreement referred to in clause 9.1.4 above;
- 9.1.6 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Available Services under the Framework;
- 9.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge and belief pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this agreement and/or any Framework Instruction which may be entered with the Client;
- 9.1.8 it is not subject to any contractual obligation, compliance with which will be likely to have an effect on its ability to perform its obligations under this agreement and/or any Framework Instruction which may be entered with the Client;
- 9.1.9 it will be responsible for the payment of remunerations and associated benefits, if any, of Service Provider Personnel, and/or for withholding or remitting income tax and national insurance contributions (or the relevant local equivalent) relating to the provision of the Available Services and/or the Framework Instruction in conformance with all Legislation;
- 9.1.10 it shall procure that the Service Provider Personnel will:
 - 9.1.10.1 have the relevant qualifications, experience, skills, expertise and training in accordance with requirements notified to the Service Provider by the Client and will be competent to carry out the duties expected of persons acting in their or a similar capacity; and
 - 9.1.10.2 be entitled to work in the United Kingdom;
- 9.1.11 it shall perform its obligations under this agreement in compliance with all applicable Legislation.
- 9.2 Each time a Framework Instruction is entered into the warranties, representations and undertakings in clause 9.1 shall be deemed to be repeated by the Service Provider with reference to the circumstances existing at the time that they are deemed to be repeated.
- 9.3 For the avoidance of doubt, the fact that any provision within this agreement is expressed as a warranty shall not preclude any right of termination the Client may have in respect of breach of that provision by the Service Provider.

10. MODERN SLAVERY

10.1 The Service Provider warrants and represents that it has complied with and throughout the Term will continue to comply with:-

10.1.1 its obligation under Section 54 of the Modern Slavery Act 2015, if applicable, to produce for each financial year an annual slavery and human trafficking statement setting out the steps it has taken during that year to ensure that slavery or human trafficking is not taking place in any part of its own business and in any of its supply chains; and

10.1.2 any applicable policy of the Client in place from time to time relating to the prevention of slavery, servitude, forced or compulsory labour, human trafficking or to any human rights matters.

11. ASSIGNMENT

11.1 The Client may assign the benefit of this agreement without the consent of the Service Provider.

11.2 The Service Provider may not assign the benefit of this agreement without the written consent of the Client.

11.3 The Service Provider undertakes to the Client that the Service Provider will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this agreement by reason that such person is an assignee and not the original promisee or by reason that the Client or any intermediate assignee escaped any loss resulting from such breach by reason of the disposal of any interest in any Project or that the Client or any intermediate assignee has not suffered any or as much loss.

12. INSURANCE

12.1 Without prejudice to its obligations under this agreement or otherwise at law, the Service Provider shall effect and maintain the following insurances in relation to the performance of this agreement:

12.1.1 Professional indemnity insurance covering its liabilities under or in connection with this agreement/and or any Framework Instruction with a limit of indemnity of not less than £ 5,000,000 (five million pounds) for each and every claim;

12.1.2 it will maintain such professional indemnity insurance at all times until 12 years after the date of practical completion of the last Project to achieve practical completion provided such insurance can be maintained on commercially reasonable terms having regard (inter alia) to the policy provisions, the premium demanded and the duties undertaken by the Service Provider in relation to a Project, but disregarding the extent to which such commercial terms may be onerous on account of the insurance record of the Service Provider;

12.2 In addition, the Service Provider shall take out and maintain at its own cost for as long as may be necessary to cover the Service Provider's liabilities under this agreement:

12.2.1 Public liability insurance of not less than £ 5,000,000 (five million pounds); and

- 12.2.2 Employers' liability insurance complying with all applicable Legislation of not less than £ 5,000,000 (five million pounds).
- 12.3 Within 10 Working Days of the Client's written request to do so and, in any event within 10 Working Days of the annual renewal date of each of the insurances referred to in clauses 12.1.1 and 12.2, the Service Provider shall (but not in any way which would breach any term of the insurance policy then in force) provide to the Client documentary evidence that the insurance required hereunder is being maintained.
- 12.4 If, for any period, such insurance is not obtainable on commercially reasonable terms (as defined above) or if the Service Provider's insurance policy becomes void or unenforceable, the Service Provider will promptly give notice of this to the Client so that the parties can discuss means of best protecting their respective positions.

13. CLIENT REMEDIES

Without prejudice to any other rights or remedies arising under this agreement, including clause 14 if the Service Provider has been unable to adequately perform a Framework Instruction in accordance with its terms or is unable to accept a Framework Instruction on three (3) or more occasions within any twelve (12) Month rolling period where the Service Provider does not have adequate resource to properly service a Framework Instruction or respond to an invitation to participate in Further Competition Procedure (as described in schedule 3) because the required resources are engaged in servicing non-Framework work, the Service Provider acknowledges and agrees that the Client shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

- 13.1.1 the Client shall be entitle to require the Service Provider, and the Service Provider agrees to prepare and provide to the Client, an improvement plan. Such improvement plan shall be subject to the Client's approval and the Service Provider will be required to implement any approved improvement plan, as soon as reasonably practicable;
- 13.1.2 the Client shall be entitled to require the Client's, and the Service Provider agrees to attend, within a reasonable time one (1) or more meetings at the request of the Client in order to resolve the issues raised by the Client in its notice to the Service Provider requesting such meetings;
- 13.1.3 the Client shall be entitled to serve an improvement notice on the Service Provider (and to withhold 10 % of any monies due to the Service Provider under a Framework Instruction until the requirements for improvement as set out in the improvement notice have been implemented ("**Fee at Risk Amount**") and the Service Provider shall implement such requirements for improvement as set out in the improvement notice;
- 13.1.4 in the event that the Client has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Service Provider either:
- 13.1.4.1 Fails to implement such requirements for improvement as set out in the improvement notice;
- 13.1.4.2 Fails to implement an improvement plan approved by the Client; and/or

- 13.1.4.3 Fails to improve (as determined by the Client in its sole discretion) in accordance with the improvement plan,

then (without prejudice to any other rights and remedies of termination provided for in this agreement) the Client shall be entitled to retain the Fee at Risk Amount and/or to suspend the Service Provider from the Framework until it has implemented the improvement plan approved by the Client and/or to terminate this agreement for material default.

14. TERMINATION

- 14.1 The Client may, without prejudice to its other rights or remedies, terminate this agreement with immediate effect by written notice to the Service Provider if one or more of the following events occurs:

- 14.1.1 Any of the following events occur in respect of the Service Provider:

- 14.1.1.1 It enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them;
- 14.1.1.2 It passes a resolution or makes a determination for it to be wound up (except for the purposes of a solvent amalgamation or reconstruction);
- 14.1.1.3 It has a winding up order or bankruptcy order made against it;
- 14.1.1.4 It has a receiver or administrative receiver appointed of it or of the whole or any part of its assets;
- 14.1.1.5 It appoints or has an administrator appointed of it;
- 14.1.1.6 Where it is a partnership, whether in addition to any of the above or alone, bankruptcy orders are made in respect of any of its partners;
- 14.1.1.7 The Service Provider suffers any event or takes any step analogous to the events or steps set out within this clauses 14.1.1.1 to 14.1.1.6 in any jurisdiction other than England and Wales.

- 14.1.2 There is a Change of Control of the Service Provider;

- 14.1.3 The Client has terminated a Framework Instruction with the Service Provider as a result of the default of the Service Provider; or

- 14.1.4 In the Client's reasonable opinion, continuing its relationship with the Service Provider risks damaging the reputation or goodwill of the Client.

- 14.2 Termination or expiry of this agreement howsoever caused shall not prejudice any rights and remedies of either party which may have accrued under it up to the date of termination or expiry, and shall not affect any provision of the agreement which is expressly or by implication intended to come into or remain in effect on or after such termination or expiry.

15. CONFIDENTIALITY AND INFORMATION

- 15.1 Save as may be strictly necessary for the proper carrying out of any of its obligations under this agreement, or as the Client may from time to time consent to in writing, the Service

Provider shall treat as confidential and shall not disclose to any person any Confidential Information relating to the Client, the Framework Scope, the Projects, this agreement, any other agreements to which the Client is or is intending to be a party in relation to the Framework Scope, and any other confidential and proprietary information which is or maybe disclosed to and/or acquired by the Service Provider during the Term.

- 15.2 The Service Provider shall not, without the prior written consent of the Client, publish alone or in conjunction with any other person any articles, illustrations, photographs or videos relating to the Projects.
- 15.3 Save as may be strictly necessary for the proper carrying out of any of its obligations under this agreement or as required by law, including, for the avoidance of doubt, the Freedom of Information Act 2000 and similar legislation or equivalent codes with which the Client is bound to comply, the Client shall not disclose to any person any confidential or proprietary information provided to it by the Service Provider.
- 15.4 The Service Provider recognises that the Client is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 ("**FOIA**") or similar legislation or equivalent codes and that the Client will be/is under an obligation to provide information on request. Such information may include matters relating to, arising under or out of the agreement in any way.
- 15.5 The Service Provider shall and shall procure that its sub-contractors shall:
 - 15.5.1 transfer to the Client all requests for information (being a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environment Information Regulations 2004) ("**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;
 - 15.5.2 provide the Client with a copy of all Information, relevant to a Request for Information, in its possession or power, in the form that the Client requests within five (5) Working Days (or such other period as the Client may specify) of the Client's request; and
 - 15.5.3 provide all necessary assistance reasonably requested by the Client to enable the Client 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 Environment Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such regulations.
- 15.6 The Service Provider recognises that each request for information must be considered individually and that any decision to disclose information will be the decision of the Client.
- 15.7 In any event, the Client shall not be responsible to the Service Provider for any loss, damage, harm or other detriment, however caused arising from the disclosure of any information under the Act or other similar legislation or code.
- 15.8 The Service Provider will provide such assistance to the Client as the Client requires to enable it to comply with its obligations under the FOIA. In particular the Service Provider acknowledges that the Client is entitled to access any and all information relating to the performance of this agreement or arising in the course of performing this agreement and the Service Provider shall grant such access. The Service Provider will respond to any request for

information about this agreement from the Client with all due expedition and at the latest within 10 days of receiving the request for information, at no additional cost to the Client.

- 15.9 The Service Provider shall comply with the Data Protection Act 2018 and any other applicable statutory obligations or guidelines, relating to the processing of personal data (as defined in the Data Protection Act 2018) which is supplied to the Service Provider by the Client or obtained by the Service Provider in the course of performing its obligations under this agreement, as a data processor or data controller as appropriate.
- 15.10 The Service Provider shall ensure that no act, omission or default on the part of the Service Provider, its subcontractors and/or employees shall cause the Client to contravene any provisions of the Data Protection Act 2018.
- 15.11 For a period of two years thereafter, the Service Provider shall hold all Confidential Information in trust and confidence for the Client and shall neither use such Confidential Information other than for the benefit of the Client nor disclose by any means to any person any such Confidential Information except as may be authorised by the Client in writing.

16. CONFLICTS OF INTEREST

- 16.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Service Provider Personnel are placed in a position where (in the reasonable opinion of the Client) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or the Service Provider Personnel and the duties owed to the Client under the provisions of this agreement or any Framework Instruction.
- 16.2 The Service Provider shall promptly notify and provide the Client with full particulars or as much detail as it is able to in circumstances where a conflict referred to in clause 16.1 above arises or may reasonably be foreseen as arising.
- 16.3 The Client reserves the right to terminate this agreement immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Client under the provisions of this agreement or any Framework Instruction. The action of the Client pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

17. PUBLICITY AND BRANDING

- 17.1 The Service Provider shall not make any press announcements or publicise this agreement or its contents in any way without the Client's prior written consent.
- 17.2 The Service Provider shall not do anything or cause anything to be done, which may damage the reputation of the Client or bring the Client into disrepute.

18. NON-DISCRIMINATION AND EQUALITY

The Service Provider shall comply with and shall use its reasonable endeavours to ensure that sub-contractors comply with all legal or statutory requirement, modification or re-enactment relating to discrimination in employment.

19. ANTI-BRIBERY AND CORRUPTION

- 19.1 The Service Provider warrants that in entering this agreement it has not and will not (and shall procure that anyone employed or acting on behalf of it or any of its agents will not) commit any Prohibited Act.
- 19.2 The Service Provider shall comply, and shall procure that persons associated with it or other persons who are performing services or providing
- 19.2.1 Do not engage in any activity, practice or conduct which would constitute an offence under section 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 19.2.2 has and maintains in place throughout the term of this agreement its own policies, procedures or processes, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with this clause 19, and enforces them where appropriate;
 - 19.2.3 promptly reports to the Client any request or demand for any undue financial or other advantage of any kind received by the Service Provider or any person working for or engaged by the Service Provider in connection with the performance of this agreement.
- 19.3 The Service Provider immediately notifies the Client if, at any time during the term of this agreement, its circumstances, knowledge or awareness changes such that it would not be able to comply with this clause 19.
- 19.4 If the Service Provider notifies the Client that it suspects or knows that there may be a breach of clause 19, the Service Provider responds promptly to the Client's enquiries, cooperates with any investigation, and allows the Client, to audit books, records and any other relevant documentation.
- 19.5 The Client may terminate this agreement by written notice with immediate effect if the Service Provider or any persons associated with it or other persons who are performing services or providing goods in connection with this agreement (in all cases whether or not acting with the Service Provider's knowledge) breaches this clause 19.
- 19.6 Any dispute relating to the interpretation of this clause 19 or the materiality of any breach of this clause 19 shall be determined by the Client and its decision shall be final and conclusive.
- 19.7 In addition to the rights and remedies provided by the foregoing provisions of this clause 19, if the Service Provider or any person associated with it or other person who is performing services or providing goods in connection with this agreement (in all cases whether or not acting with the Service Provider's knowledge) breaches this clause 19 the Client may:
- 19.7.1 if the breach was committed by a sub-contractor, require the Service Provider to terminate the relevant subcontract and to procure the performance of the part of the Services in which the relevant subcontractor was engaged by others; or
 - 19.7.2 if the breach was caused by the act or omission of an employee of the Service Provider or a sub-contractor, require the Service Provider to replace or procure the replacement of that person.

- 19.8 Notwithstanding any other provision of this agreement the Service Provider is not entitled to any relief from its obligations or additional payment by reason of the exercise by the Client of its rights pursuant to this clause 19.

20. RIGHTS OF AUDIT, INSPECTION AND ACCESS

- 20.1 Subject to compliance with applicable Legislation, the Client and the Client's agents are entitled at any time, or frequency, to conduct an audit, inspection, review, periodic monitoring and spot check for the purposes of:
- 20.1.1 Reviewing the Service Provider's activities in connection with, and performance in respect of, this agreement;
 - 20.1.2 verifying the accuracy of all amounts paid or payable under this agreement and any costs of suppliers (including sub-contractors) of the Services, which shall include the verification of any supporting documentation in respect of the amounts paid or payable under this agreement;
 - 20.1.3 Reviewing all information required to be kept by the Service Provider pursuant to this agreement;
 - 20.1.4 Verifying the accuracy and completeness of any management information delivered or required by this agreement;
 - 20.1.5 Reviewing the integrity, confidentiality and security of the information required to be kept by the Service Provider pursuant to this agreement;
 - 20.1.6 Reviewing the Service Provider's compliance with the Freedom of Information Act 2000, Environment Information Regulations 2004 and the Data Protection Act 2018 in accordance with clause 15 of this agreement compliance with the Bribery Act 2010 in accordance with clause 19 of this agreement and any other regulatory requirements or Legislation applicable to the Services;
- 20.2 In the event of any adverse findings following an audit, inspection, review, periodic monitoring or spot check pursuant to clause 20.1, the Service Provider will take such actions as the Client may require and shall ensure compliance with all terms of this agreement.
- 20.3 For the purpose of carrying out an audit pursuant to this clause 20 the Client and any agent of the Client are, subject to compliance with applicable Legislation, entitled to:
- 20.3.1 Reasonable access to all parts of the premises used by the Service Provider for or in connection with the performance or provision of the Services;
 - 20.3.2 Interview any employees, seconders or other personnel of the Service Provider;
 - 20.3.3 Carry out any inspections or tests to determine the integrity of information supplied and the quality of the information systems used by the Service Provider;
 - 20.3.4 request and receive all information, books of accounts, records and data together with appropriate rights of access to any equipment and/or information systems required to obtain such information; and
 - 20.3.5 Copy and collate any information requested pursuant to this clause 20.

- 20.4 Where appropriate, the Client will discuss the outcome of the audit findings with the Service Provider. In such circumstances, the Service Provider shall maintain records of the audit findings together with details of any corrective action taken as a result of such audit findings.
- 20.5 The Client, shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services. The Service Provider is not excused from performance of any aspect of its obligations under this agreement for any period of time during which the Client or its agents are exercising their respective rights under this clause 20.

21. NOTICES

Any notice required to be given by one party hereto to the other shall be in writing and shall be served by sending the same by pre-paid first class recorded delivery post or by delivering the same by hand to the address of the party as shown herein above or such other address as a party may from time to time notify to the other party and any notice so served shall be deemed to have been served when delivered by hand at the time of such delivery and when sent through the post 48 hours after the time of despatch (save in the event of a current industrial dispute affecting the postal service when the relevant party shall re-serve by any other means permitted herein) and in proving the service of the same it shall be sufficient to prove, in the case of a letter, that such letter was properly delivered or stamped, addressed and placed in the post (as the case may be) .

22. CUMULATIVE REMEDIES

The rights and remedies under this agreement are cumulative and in addition to and, except where otherwise expressly provided in this agreement, do not exclude, any rights and remedies provided by law (including equitable remedies) or otherwise.

23. RELATIONSHIP OF THE PARTIES

Nothing in this agreement is intended or shall be construed as creating a partnership, joint venture, the relationship of principal and agent, or any other legal relationship between the parties that would impose liability upon one party for the act or failure to act of the other. Neither party has authority or power to make representations or bind the other in any way.

24. FURTHER ASSURANCE

Each party shall, at the request and cost of the other, use all reasonable endeavours to promptly do or procure the doing of all such further acts, and execute and deliver or procure the valid execution and delivery of all such documents, as may from time to time be necessary in the requesting party's reasonable opinion to give full effect to this agreement and to secure to the requesting party the full benefit of the rights, remedies and benefits conferred on it by this agreement.

25. SEVERANCE

If any provision (or part of any provision) of this agreement is, or becomes illegal, invalid or unenforceable in any respect: (a) it shall not affect or impair the legality, validity or enforceability of any other provision of this agreement; and (b) the parties shall negotiate in good faith to amend such provision (or part provision), such that as amended it is legal, valid and enforceable and to the greatest extent possible achieves the parties' original commercial intention.

26. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("C RTPA") to enforce any term of the agreement. This clause 26 will not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to C RTPA.

27. VARIATION

No variation of this agreement or any other documents referred to in it shall be valid unless it is in writing and signed by, or on behalf of each of the parties to this agreement.

28. ENTIRE AGREEMENT

28.1 This agreement constitutes the entire agreement and understanding between the parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the Commencement Date by, or on behalf of, the parties and relating to its subject matter.

28.2 Each party confirms that it has not relied upon, and (subject to clause 28.4) shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any party (whether or not a party to this agreement) unless that warranty, statement, representation, understanding or undertaking is expressly set out in this Agreement.

28.3 Subject to clause 28.4, neither party shall be entitled to the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this agreement.

28.4 Nothing in this agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

29. COSTS

Each Party shall bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and implementation of this agreement.

30. COUNTERPARTS

30.1 This agreement may be executed in any number of counterparts, and by the parties as separate counterparts but will not be effective until each party has executed at least one counterpart.

30.2 Each counterpart shall constitute an original of this agreement, but all the counterparts shall together constitute one and the same agreement.

31. GOVERNING LAW AND JURISDICTION

31.1 This agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

31.2 Any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including any non-contractual dispute or claim) shall be subject to the exclusive

SCHEDULE 1: DEED OF APPOINTMENT

Deed of Appointment to be annexed

SCHEDULE 2: AVAILABLE SERVICES AND CORE TEAM

This schedule 2 contains details of the Available Services required by the Client which may be amended or supplemented for a Project by a Framework Instruction.



Appendix J Cableways Inspection Specification.zip

Core Team of Service Provider's Personnel



SCHEDULE 3: ORDERING PROCEDURE

1. AWARD PROCEDURE

1.1 If the Client decides to source the Available Services through the Framework then it will award its Services Requirements in accordance with the procedure in this schedule 3 (*Ordering Procedure*) and the requirements of the Regulations.

1.2 If the Client can determine that:

1.2.1 it has a particular requirement that can be met by the Service Provider's Available Services as set out in schedule 2 (*Available Services and Core Team*) ; and

1.2.2 all of the terms of the proposed contract are laid down in this agreement and the Framework Instruction/Deed of Appointment do not require amendment or any supplementary terms and conditions,

then the Client may place an Order and a Framework Instruction in accordance with the Direct Ordering Procedure set out in paragraph 2 below ("**Direct Award**").

1.3 If all of the terms of the proposed contract are not laid down in this agreement and the Client:

1.3.1 requires the Service Provider to develop proposals or a solution in respect of such Client's requirements); and /or

1.3.2 needs to amend or refine the Framework Instruction/Deed of Appointment to reflect its requirements to the extent permitted by and in accordance with the Regulations;

then the Client shall place an Order in accordance with the procedures set out in paragraph 3 below ("**Further Competition Procedure**").

The Service Provider shall be fully responsible for all its costs of responding to invitations by the client to participate in both Direct Award and a Further Competition Procedure. The Service Provider acknowledges and agrees that in no event shall the Client have any liability for such costs, in whole or in part, at any time and even where the Client decides not to appoint any Framework Service Provider for any reason.

2. DIRECT ORDERING WITHOUT A FURTHER COMPETITION

2.1 The Service Provider has provided the Client with a written description of the Service Provider's capabilities and Service Provider's Personnel which is annexed to this agreement (and which shall be updated by the Service Provider from time to time) ("**Background Information**") and which:

2.1.1 describes the scope, depth and breadth of the Available Services which the Service Provider offers under this Framework;

2.1.2 identifies the Service Provider's Personnel who will act as the Service Provider's key contacts in respect thereof, and provides an overview of the relevant experience and background of such Service Provider Personnel;

- 2.1.3 provides a summary of the Service Provider's experience and experience in each of the Available Services gained over the three (3) preceding calendar years (and shall be updated on a rolling basis throughout the Term).
- 2.2 The Background Information shall be kept reasonably up to date, and shall be updated by the Service Provider at regular intervals at least once every six (6) calendar months, or more frequently if the details and/or content of the Service Provider's Background Information have changed significantly.
- 2.3 Before the Client decides to place a Framework Instruction under this paragraph 2.3, it must:
- 2.3.1 satisfy itself that it is appropriate, having regard to the circumstances, for it to make a Direct Award;
- 2.3.2 identify its requirements for Available Services, which may either be in the nature of a general requirement for support in any of the Available Services, or a Statement of Requirements identifying and specifying the Available Services required;
- 2.3.3 identify which Available Services are relevant to its requirements;
- 2.3.4 identify the Framework Service Providers capable and authorised to provide the relevant Available Services using the information provided by each of the Framework Service Providers within this agreement or the other agreements;
- 2.3.5 apply the following Direct Award Criteria:

Evaluation criteria	Criteria Weighting %	Sub-criteria	Sub-criteria Weighting %
Quality	60	To be determined by Client	To be determined by Client
Total Costs based on prices tendered for the Framework	40	To be determined by Client	To be determined by Client
	100		

to the Background Information of the Framework Service Providers which it has identified as capable and authorised to provide the relevant Available Services in order to establish which Framework Service Provider, in the view of the Client, provides the most economically advantageous solution ; and

- 2.3.6 on the basis set out above, award the Framework Instruction with the successful Framework Service Provider in accordance with paragraphs 2.4 and 2.5 below.
- 2.4 Once the client has identified the Framework Service Provider best able to meet its requirements, it may award a Framework Instruction:

- 2.4.1 based on the fees tendered by the Service Provider; or
- 2.4.2 subject to paragraph 2.5, based on an alternative fee arrangement, including (but not limited to):
 - 2.4.2.1 a capped price based on fees quoted by and agreed with the relevant Service Provider; or
 - 2.4.2.2 a fixed price based on fees quoted by and agreed with the relevant Service Provider; or
 - 2.4.2.3 any combination of the pricing models set out above,

provided that the Client shall not seek discounts to the Service Provider's fees as part of any alternative fee arrangement under this paragraph 2.

- 2.5 Where Client wishes to obtain an alternative fee arrangement (in accordance with paragraph 2.4 it will seek a quote from the Service Provider it has identified as providing the most economically advantageous solution pursuant to paragraph 2.3.5. Once the alternative fee arrangement has been agreed, or if the Client is placing the Framework Instruction on the basis of the Service Provider's tendered fees, the Client may award the Framework Instruction by issuing (whether electronically or otherwise) a signed and appropriately completed Framework Instruction to the Service Provider which the Service Provider shall countersign and return promptly without delay but in any event within two (2) Working Days of receipt.
- 2.6 In the event that the selected Framework Service Provider is unable to undertake the Framework Instruction or declines the work the Client shall be entitled to make a Direct Award to the Framework Service Provider who it believes provides the next most economically advantageous solution.

3. FURTHER COMPETITION PROCEDURE

Client's Obligations

- 3.1 When ordering Available Services under the Framework through a further competition the Client shall:
 - 3.1.1 develop a Statement of Requirements setting out its requirements for the Available Services and identify the Framework Service Providers capable of supplying the Available Services;
 - 3.1.2 invite proposals by conducting a further-competition for its Services Requirements in accordance with the Regulations and in particular:
 - 3.1.2.1 invite the Framework Service Providers to develop a proposed statement of work setting out their respective proposals in respect of the Client's Statement of Requirements ("**Statement of Work**") by giving written notice by email to each Framework Service Provider;
 - 3.1.2.2 set a time limit for the receipt by it of the proposals submitted in accordance with paragraph 3.1.2.1 above which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit such proposals; and

3.1.2.3 keep each proposal confidential until the time limit set out in paragraph 3.1.2.2 above has expired.

3.1.3 notify the Framework Service Providers capable of meeting the Statement of Requirements of the following Further Competition Award Criteria and weightings to Framework Service Providers' compliant proposals submitted through the Further Competition. Due to the range and complexities of the potential requirements the Client reserves the right to define the sub criteria, including weightings as part of the further competition tender process.

Evaluation criteria	Criteria Weighting %	Sub-criteria	Sub-criteria Weighting %
Quality	60	To be determined by Client	To be determined by Client
Total Costs	40	To be determined by Client	To be determined by Client
	100		

3.1.4 apply the Further Competition Award Criteria to the Framework Service Providers' compliant proposals submitted through the further competition as the basis of its decision to award a Framework Instruction for its Services Requirements;

3.1.5 on the basis set out above, award its Services Requirements by placing an Order and Framework Instruction with the successful Framework Service Provider in accordance with paragraph 5 which:

3.1.5.1 states the Services Requirements;

3.1.5.2 states the Statement of Work submitted by the successful Framework Service Provider;

3.1.5.3 states the charges payable for the Services Requirements in accordance with the proposal submitted by the successful Framework Service Provider; and

3.1.5.4 incorporates the Framework Instruction details into the Deed of Appointment applicable to the relevant services; and

3.1.6 provide unsuccessful Framework Service Providers with a debrief in relation to the reasons why their proposals were unsuccessful.

3.2 Where the client intends to award a Framework Instruction through a Further Competition Procedure it shall either:

3.2.1 invite all Framework Service Providers to tender for the required Available Services; or

- 3.2.2 identify and invite to tender at least two Framework Service Providers capable of supplying the required Available Services using their Background Information, If the Client is not able to identify and invite at least three such Service Providers, it shall following the procedure set out at paragraph 3.2.1 and invite all Framework Service Providers to tender for the required Available Services.

Service Provider's Obligations

- 3.3 The Service Provider shall in writing, by the time and date specified by the Client in accordance with paragraph 3.1.2.2 provide the Client with either:
 - 3.3.1 a statement to the effect that it does not wish to submit proposals in relation to the relevant Services Requirements; or
 - 3.3.2 the Statement of Work and full details of its proposals made in respect of the relevant Statement of Requirements. In the event that the Service Provider submits a Statement of Work, it should include, as a minimum:
 - 3.3.2.1 an email response subject line to comprise unique reference number and Service Provider name, so as to clearly identify the Service Provider;
 - 3.3.2.2 a brief summary, in the email, stating whether or not the Service Provider is bidding for the Statement of Requirements;
 - 3.3.2.3 a proposal covering the Services Requirements; and
 - 3.3.2.4 CVs of Service Provider Personnel considered appropriate for the Client's Services Requirements;
- 3.4 The Service Provider shall ensure that any prices submitted in relation to a further competition held pursuant to this paragraph 3 shall be based on the Charging Structure as set out in schedule 4 (*Charging Structure*).
- 3.5 The Service Provider agrees that :
 - 3.5.1 all proposals submitted by the Service Provider in relation to a further competition held pursuant to this paragraph 3 shall remain open for acceptance by the Client for ninety (90) days (or such other period specified in the invitation to tender issued by the relevant Client in accordance with the Ordering Procedure);
 - 3.5.2 all tenders submitted by the Framework Service Provider are made and will be made in good faith and that the Framework Service Provider has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Framework Service Provider certifies that it has not and undertakes that it will not:
 - 3.5.3 communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and

- 3.5.4 enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

4. NO AWARD

Notwithstanding the fact that the Client has followed a procedure as set out above in paragraph 2 or 3, the Client shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this agreement shall oblige any Client to place any Framework Instruction or enter into any Deed of Appointment for the Available Services.

5. FORM OF ORDER

- 5.1 Subject to paragraphs 1 to 4 above, the Client may place an order for a Framework Instruction with the Service Provider by serving an order in writing (including, for the purposes of this paragraph 5.1, systems of ordering involving electronic mail or other on-line solutions).
- 5.2 The Client in placing an order pursuant to paragraph 5.1 above shall issue a Framework Instruction Agreement to the Service Provider for the provision of services referred to in that order. A Framework Instruction shall be formed when the Service Provider has returned the Framework Instruction and the Deed of Appointment signed by the Service Provider and will commence from the date specified in the Framework Instruction.
- 5.3 Each Framework Instruction sets out the applicable commercial terms of the proposed Deed of Appointment and shall be deemed to incorporate the Deed of Appointment terms and conditions to the exclusion of any terms and conditions which the Service Provider may seek to impose under any quotation, confirmation of order, delivery note, invoice or similar document. The Service Provider and the Client agree that any other terms or conditions (whether or not inconsistent with the Deed of Appointment) contained or referred to in any correspondence or any documentation submitted by the Service Provider or elsewhere implied by custom, practice or course of dealing shall not apply.
- 5.4 For the avoidance of doubt, each Framework Instruction and Deed of Appointment shall survive the expiration of this agreement.

SCHEDULE 4: CHARGING STRUCTURE

Where the Service Provider is to provide services based on its rates the following rates submitted by the Service Provider in its tender shall apply:

Item Number	Description	Cost	Number	Contract total
1	Cost per site to produce Operation & Maintenance manual	£ [REDACTED]	51	£ [REDACTED]
2	Cost per site visit for inspection and carrying out routine maintenance for cableway <20m length	£ [REDACTED]	3	£ [REDACTED]
3	Cost per site visit for inspection and carrying out routine maintenance for cableway 20m to 60m length	£ [REDACTED]	39	£ [REDACTED]
4	Cost per site visit for inspection and carrying out routine maintenance for cableway >60m length	£ [REDACTED]	9	£ [REDACTED]
5	Cost of call out per site per day-next working day response time	£ [REDACTED]	5	£ [REDACTED]
6	Cost of call out per site per day-five (5) working days response time	£ [REDACTED]	10	£ [REDACTED]
7	Cost of call out per site per day-ten (10) working days response time	£ [REDACTED]	20	£ [REDACTED]
8	Replace non-conformant rope grips with grips to DIN 1142, per grip any size	£ [REDACTED]	10	£ [REDACTED]
9	Remake coax plug termination	£ [REDACTED]	10	£ [REDACTED]
10	Remake hook end connector	£ [REDACTED]	10	£ [REDACTED]
11	Supply and fit replacement plug connector	£ [REDACTED]	10	£ [REDACTED]
12	Supply and fit replacement shackle	£ [REDACTED]	10	£ [REDACTED]
13	Apply grease band weather proofing to terminations	£ [REDACTED]	10	£ [REDACTED]
17	Surcharge for boat access at one site	£ [REDACTED]	13	£ [REDACTED]
18	Surcharge for working at height access equipment at one site	£ [REDACTED]	13	£ [REDACTED]
			Total	£ [REDACTED]

Item Number	Description	Unit	Cost
14a	Fixed costs of replacing main cable with 10mm rope, (including the supply of the rope and the appropriate fittings)	£	£ [REDACTED]
14b	£ per m of replacing main cable with 10mm rope.	£ per M	£ [REDACTED]
15a	Fixed costs of replacing traveller cable, 4mm, (including the supply of the rope and the appropriate fittings)	£	£ [REDACTED]

15b	Price per metre of replacing traveller cable, 4mm, (including the supply of the rope and the appropriate fittings)	£ per M	£ [REDACTED]
16a	Fixed cost of replacing coax cable, (including the supply of the rope and the appropriate fittings)	£	£ [REDACTED]
16b	Price per meter of replacing coax cable, (including the supply of the rope and the appropriate fittings)	£ per M	£ [REDACTED]

Payment

Payment of Fees and payment applications for Fees shall be as specified in the Deed of Appointment

SCHEDULE 5: FRAMEWORK INSTRUCTION

Framework Instruction

This Framework Instruction is made on []

On the terms set out in the agreement ("**Framework Agreement**") between [] and [] ("**Parties**") dated [].

General

The following terms and conditions, are to be incorporated into the Deed of Appointment which is as varied and supplemented by the terms below. Defined terms in this Framework Instruction have the meanings attributed to them in the Framework Agreement or Deed of Appointment as appropriate.

This Framework Instruction is a contract between the Parties and is assignable and terminable independently of the Framework Agreement in accordance with the Deed of Appointment.

[Specific Terms]

Any additional terms that apply to this Framework Instruction are set out below.

[Insert any additional project specific terms]

Particulars (Schedule 1 of the Deed of Appointment)

Clause	Appointment particulars
1.1	"Beneficiary" includes: the Funder; [any Purchaser of the Project]; [any Tenant of the Project]; [Group Companies of the Client]; [Building Contractor][where it has design responsibility but novation is not appropriate];
1.1	"Key Person" is ♦ .
1.1	"Other Service Providers" include:

Clause	Appointment particulars
1.1	"Site" is the area of land situated at ♦ .
1.1	"Works" are [<i>description of works</i>].
3.1, 4.1 and 1.1	"Brief" is ♦ .
3.1, 3.6, and 1.1	"Programme" is ♦ .
3.8.1, 3.8.2 and 1.1	CDM Regulations: clause 3.8.1 [applies/does not apply]; clause 3.8.2 [applies/does not apply];
7.1	Professional indemnity insurance £♦ million; [each and every claim] [any one claim or series of claims arising from one event]; [£♦ million in the aggregate in respect of pollution/asbestos].
8.2	Proprietary Material Number of paper copies (excluding originals) [<i>specify</i>].

Services (Schedule 2 of the Deed of Appointment)

[Insert additional Project specific services]

Brief (Schedule 3 of the Deed of Appointment)

[Insert Brief]

Programme (Schedule 4 of the Deed of Appointment)

[Insert Programme]

The Fee (Schedule 5 of the Deed of Appointment)

The Fee is the [lump] sum of £ [See Framework Instruction] exclusive of VAT.

[Note these execution blocks are part of the Framework Instruction and should be included with each individual Framework Instruction.]

[illegible]

Name (block capitals) _____
**Director/authorised
 signatory**

Signed for and on behalf of [SERVICE PROVIDER] by: _____ Signature _____

Name (block capitals) _____
**Director/authorised
 signatory**