

“the Framework Agreements” means the framework agreements (otherwise referred to as Construction Framework South West) for major schemes and programmes of work, together with all appendices, schedules and guidance thereto, entered into or to be entered into between the Lead Organisation and each Service Provider in the form attached at Schedule C and “Framework Agreement” shall be construed accordingly;

“Framework IPR” means all IPR created by any or all of the Parties and/or any Other Framework User, their employees, or any agent or subcontractor of a Party or Other Framework User in fulfilment of the purposes of the Framework Agreements or exclusively for the purposes of the Framework Agreements, but for the avoidance of doubt, excluding the Underlying Contract IPR;

“Funding” means the funding for establishing and managing the Framework Agreements, this Agreement and the Other Agreements as detailed in Clauses 4.2 and 9;

“Gateway Review” means the review of the Underlying Contracts or deliverables under the Framework Agreements to be undertaken by the Lead Organisation with the involvement of the Project Board;

“IPR” means all copyright and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trade marks, service marks, trade names, registered design and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world;

“Other Agreements” means the agreements in the same or similar terms to this Agreement between the Lead Organisation and the Other Framework Users;

“Other Framework Users” means the organisations that have entered into the Other Agreements with the Lead Organisation and **“Other Framework User”** shall be interpreted accordingly;

“the Parties” means the parties shown at the head of this Agreement and the term “Party” shall be interpreted accordingly;

“Performance Indicators” means any or all of the measurements of performance of the Service Providers and the Commissioning Organisations under the Framework Agreements and/or the Underlying Contracts;

“Project Board” means the Project Board detailed in Clause 7;

“SW RIEP” means the Regional Improvement and Efficiency Partnership for the South West Region or any successor body;

“Service Providers” means any or all of the service providers who have entered into the Framework Agreements with the Lead Organisation and such parties’ successors in title and the term **“Service Provider”** shall be interpreted accordingly;

“Term” means the term of this Agreement detailed in Clause 12;

“Terms of Reference” means the terms of reference for the Project Board set out in Clause 7 and in Schedule A (including any amendments agreed pursuant to Clause 7.9.10);

“the Underlying Contracts” means any or all of the contracts for specific projects or programmes of works or pre-construction services entered into between a Commissioning Organisation and a Service Provider pursuant to a Framework Agreement;

“Underlying Contract IPR” means all IPR created by any Commissioning Organisation and belonging to that Commissioning Organisation specifically for the purposes of an Underlying Contract.

- 2.2 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted.
- 2.3 Except when expressly defined differently words importing the singular include the plural, words importing any gender include every gender, words importing persons include bodies corporate and unincorporated; and (in each case) visa versa.
- 2.4 Reference to clauses and schedules are references to clauses and schedules of this Agreement and any reference to a sub provision is unless otherwise stated a reference to a sub provision of the provision in which the reference appears.
- 2.5 The clause and paragraph headings and titles appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

3. STATUS OF THE AGREEMENT

- 3.1 The Parties agree that this Agreement shall take the form of a contractual relationship and mutual commitments between them shall be created and the Agreement shall be construed accordingly.
- 3.2 Nothing in this Agreement shall constitute or be deemed to constitute a partnership pursuant to the Partnership Act 1890 between the Parties or any of them and none of the Parties shall have the organisation or power (nor represent themselves as having such organisation or power) to contract in the name of or to undertake any liability or obligation on behalf of or to pledge the credit of the other Party.
- 3.3 SW RIEP acting through COPROP SW shall be entitled to benefit from the provisions of this Agreement which confer on it benefits and rights as against the Framework User and may enforce such benefits and rights in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Subject to the foregoing, the Parties intend that no provision in this Agreement shall, by virtue of the Contracts (Rights of Third Parties) Act 1999, confer any benefit on, nor be enforceable by any person who is not a Party to this Agreement.

4. ROLE OF SW RIEP

- 4.1 SW RIEP through COPROP SW has, for so long as it is providing the Funding, overall responsibility for establishing and managing the Framework Agreements and is responsible for all decisions and commitments to be made or given in relation to the Framework Agreements.
- 4.2 SW RIEP acting through COPROP SW has delegated its responsibilities set out in Clause 4.1 to the Lead Organisation and the Project Board and has agreed to provide the Funding, in accordance with its letter of 15 August 2008 attached hereto at Schedule D, in relation to liabilities claims costs and/or expenses of or incurred by the Lead Organisation in performing such responsibilities.

5. ROLE OF LEAD ORGANISATION

- 5.1 The role of the Lead Organisation shall be:
 - 5.1.1 to set up and manage the Framework Agreements, this Agreement and the Other Agreements and promote the use of the Framework Agreements and to seek to deliver the objectives of the Framework Agreements as referred to therein;

- 5.1.2 to report regularly to the Project Board on allocation of Underlying Contracts to Service Providers, performance and development of the Framework Agreements and working arrangements under the Framework Agreements;
- 5.1.3 to act as the representative of the Framework User and the Other Framework Users in any discussions or negotiations or other appropriate transactions with any relevant body, including but not limited to the Service Providers, in relation to the Framework Agreements;
- 5.1.4 subject to Clause 8 to lead and manage such staff as shall be required to assist with the development and or delivery of the Framework Agreements.

Such duties shall be exercised by the Lead Organisation with reasonable skill and care shall be subject to change on instructions from SW RIEP acting through COPROP SW and shall be subject to the scrutiny of the Project Board.

- 5.2 The Framework User warrants to the Lead Organisation that it has satisfied itself that it is permitted to enter into Underlying Contracts pursuant to the Framework Agreements and has validly passed a resolution or is otherwise permitted to authorise the Lead Organisation to act on its behalf under this Agreement. The Framework User accepts that neither the Lead Organisation nor SW RIEP will have any liability to the Framework User whether in contract tort or under any statute in respect of any cost, liability, loss or damage that the Framework User may incur as a result of use of the Framework Agreements and/or entry into any Underlying Contracts or this Agreement and the Framework User will indemnify, defend and hold harmless the Lead Organisation and SW RIEP from any claim, liabilities, losses, costs, damages and/or expenses arising out of or pursuant to the Framework User entering into this Agreement and/or any Underlying Contracts and/or using the Framework Agreements.
- 5.3 The Lead Organisation shall not permit any party to use the Framework Agreements until the Lead Organisation has entered into an agreement on the same or similar terms as this Agreement (which agreement then shall become an Other Agreement) with that party (which party shall then become an Other Framework User).

6. ROLE OF THE FRAMEWORK USER

- 6.1 The Framework User shall comply in all respects with the terms of the Framework Agreements when entering into any Underlying Contract and generally and acknowledges that it has been provided with the terms of the Framework Agreements. The Framework User will not do anything that will put the Lead Organisation in breach of any Framework Agreements and will indemnify the Lead Organisation and SW RIEP in respect of any breach of its obligations under this Clause 6.1.
- 6.2 Subject to Clauses 5.2 and 6.1 the Framework User shall be entitled to enter into an Underlying Contract with any Service Provider in accordance with the terms of the Framework Agreements.
- 6.3 It shall be the responsibility of the Framework User to ensure that the appropriate contract management arrangements and review procedures are in place in respect of Underlying Contracts to which the Framework User is a party. This shall include but not be limited to the collection of information for the Gateway Review.
- 6.4 The Framework User shall ensure that the data required for reporting or monitoring Performance Indicators is provided to the Lead Organisation in respect of all Underlying Contracts to which the Framework User is a party on a quarterly basis and shall also provide to the Lead Organisation all other monitoring information and information on the operation of the Framework Agreements including information on any savings achieved as may reasonably be requested from time to time.

- 6.5 The Framework User before letting an Underlying Contract shall ensure that they verify that any assessments of a Service Provider, including without limitation on financial standing and health and safety policies and procedures as provided by EXOR Management Services Limited or such other credit reference organisation as maybe used by the Lead Organisation meet the needs and requirements of the Framework User.
- 6.6 The Framework User shall ensure that under any Underlying Contract to which it is a party it shall act as sole client for the purposes of the Construction (Design and Management) Regulations 2007 and ensure such notification is made to the Health and Safety Executive. The Framework User acknowledges that the Lead Organisation and SW RIEP have and will have no responsibility for health and safety issues or any other matters under or relating to the Underlying Contracts.
- 6.7 The Lead Organisation reserves the right to undertake an audit of the Framework User to ensure that the Framework User is complying with its obligations under this Agreement, the terms of the Framework Agreements and any Underlying Contract to which the Framework User is a party and shall be entitled to inspect and copy all such documents as it deems reasonably necessary as part of its audit.

7. PROJECT BOARD

- 7.1 The Project Board shall be responsible for providing scrutiny and support for the development of governance arrangements between the Parties and Other Framework Users in relation to the development and operation of the Framework Agreements. The roles and responsibilities of the Project Board are further set out in clause 7.9 and Schedule A.
- 7.2 The Project Board shall have twelve members (each referred to as a "Project Board Member") and shall be constituted by two representatives of the Lead Organisation ("the Lead Organisation Project Board Members") selected by the Lead Organisation alone, one representative of and nominated by SW RIEP for so long as it is providing the Funding and a maximum of nine representatives from the Framework User and the Other Framework Users ("the Framework Users Project Board Members") (there shall only be one representative from each of the Framework User and Other Framework Users). The selection and election process for the Framework Users Project Board Members is outlined in Schedule B. The Framework User shall provide and maintain at all times a candidate to be elected as a Framework User Project Board Member.
- 7.3 The Project Board Members shall be persons who are suitably qualified and experienced to act as members of a scrutiny board for the Framework Agreements and who shall be officers within their relevant organisation of appropriate standing and seniority.
- 7.4 The Project Board Members shall all have one vote at any meeting of the Project Board.
- 7.5 The Project Board:
- 7.5.1 shall not be a committee or joint board of the Lead Organisation, SW RIEP, the Framework User or any Other Framework User;
 - 7.5.2 shall have no separate or legal existence independent from the Lead Organisation, SW RIEP, the Framework User or any Other Framework User;
 - 7.5.3 shall operate as a forum in which the Project Board Members shall meet and advise the Lead Organisation on the operation and development of the Framework Agreements.

- 7.6 A meeting of the Project Board shall be quorate with the attendance of two thirds of the Project Board Members who are entitled to vote at such meeting provided that at least one of the Project Board Members in attendance is a Lead Organisation Project Board Member.
- 7.7 The Framework User may remove any person acting from time to time as its representative on the Project Board and appoint another person in his place and in doing so shall have regard to the views of existing Project Board Members when appointing to such vacancy on the Project Board.
- 7.8 The Lead Organisation and the Framework User agree that they will act in good faith and with goodwill and in accordance with the spirit of this Agreement and use reasonable endeavours to support the development and operation of the Framework Agreements and assist the Project Board to:-
- 7.8.1 act by consensus;
 - 7.8.2 reach unanimous agreements and decisions in accordance with agreed timescales and in the overall interests of the Framework Agreements and or Underlying Contracts; and
 - 7.8.3 avoid in so far as possible deadlock over necessary decisions and/or situations.
- 7.9 The roles and responsibilities of the Project Board shall be as follows:-
- 7.9.1 to monitor the Framework Agreements (in the sense of giving support to the Lead Organisation in the use of the Framework Agreements but not becoming involved in their day to day management);
 - 7.9.2 to scrutinise the Framework Agreements in order to ensure that:
 - 7.9.2.1 the Framework Agreements are being properly managed and that progress is monitored to ensure the project delivery plan and its associated outputs and actions are achieved;
 - 7.9.2.2 to promote high standards of quality assurance in the management of the Framework Agreements and/or Underlying Contracts;
 - 7.9.3 to participate in the development of standards for management and content development for the Framework Agreements and/or Underlying Contracts;
 - 7.9.4 to be actively involved in the monitoring of the Gateway Review in relation to the Framework Agreements;
 - 7.9.5 to oversee and approve the preparation of all budgets plans and business plans for the Framework Agreements and any changes thereto;
 - 7.9.6 to review any draft contracts required in respect of the management of the Framework Agreements and provide comments where appropriate to the Lead Organisation;
 - 7.9.7 to review all arrangements proposed by the Lead Organisation for staffing in accordance with this Agreement;
 - 7.9.8 to consider and advise on applications to the Lead Organisation from organisations who wish to become Other Framework Users;

- 7.9.9 to review this Agreement and other agreements between the Lead Organisation and Other Framework Users and the Framework Agreements in the light of any relevant legislative changes or organisational or administrative changes;
 - 7.9.10 to review the Terms of Reference from time to time and agree any changes considered necessary with the Lead Organisation;
 - 7.9.11 to perform any other functions relevant to the Framework Agreements which would normally be within the competence of a scrutiny board (of which the members were non-executive) of a public or quasi public body (but subject to and within the terms of Clause 7);
 - 7.9.12 to advise on arrangements required to be made upon termination of this Agreement or any other agreement between the Lead Organisation and any Other Framework User and/or any Framework Agreement.
- 7.10 The Project Board shall meet as regularly as is necessary in order to perform its role but in any event no less than twice per year. The Lead Organisation shall give the Project Board Members at least 14 days written notice in advance of any meeting of the Project Board. Such notice shall include an agenda for the issues to be discussed and any decisions or actions to be considered at such meeting.

8 FRAMEWORK MANAGEMENT TEAM

- 8.1 The Parties agree that sufficient and appropriate staff (“the Framework Management Team”) shall be engaged or made available by the Lead Organisation to manage the activities of the Framework Agreements.
- 8.2 The Parties agree that the Lead Organisation shall be entitled for the purposes of Clause 8.1 to employ staff on the standard terms of employment used by the Lead Organisation.
- 8.3 The Lead Organisation may pay and charge to the Funding and/or recover from the Framework User pursuant to Clause 9 the costs incurred pursuant to Clauses 8.1 and 8.2 and fees of consultants, such other persons or bodies as shall be reasonably required to be engaged for the purposes of management and supervision of the Framework Agreements this Agreement and the Other User Agreements and estimates of whose fees shall have been included in the budget or budgets from time to time approved by the Project Board and if appropriate SW RIEP acting through COPROP SW.

9 FUNDING

- 9.1 The role and responsibilities of the Lead Organisation in establishing and managing the Framework Agreements, this Agreement and the Other Agreements including:
 - 9.1.1 properly performing or discharging its roles and/or responsibilities under this Agreement, the Other Agreements and the Framework Agreements as the Lead Organisation; and/or
 - 9.1.2 undertaking any contract or commitment on behalf of the Framework User and/or the Other Framework Users or providing any service, resource, assistance or in-kind support as required for the purposes of the Framework Agreements, this Agreement and/or the Other Agreements; and/or
 - 9.1.3 acting in the course of its duties as Lead Organisation; and/or
 - 9.1.4 appointing and/or employing in its capacity as the Lead Organisation any person or organisation;

shall be funded by SW RIEP (“the Funding”) in accordance with its letter of commitment to the Lead Organisation of 15 August 2008 as attached hereto at Schedule D.

- 9.2 Should the Funding be withdrawn or become unavailable at any time there will be a requirement for the Framework User and all Other Framework Users to contribute by an agreed mechanism to indemnify the Lead Organisation for its costs, liabilities and expenses properly and reasonably incurred in continuing to manage the Framework Agreements, this Agreement and the Other Agreements provided that the Lead Organisation shall give the Framework User notice of the withdrawal of the Funding as soon as reasonably practicable after it becomes aware of the same.
- 9.3 In the event that the Funding is withdrawn the Framework User’s liability will be referred to the Project Board for consideration and thereafter to the Lead Organisation for decision following consideration of the advice given by the Project Board. At the date of this Agreement the mechanism for determining the amount the Framework User will pay shall be in accordance with the following formula:
- 9.3.1 the share of the Framework User under the aforementioned indemnity shall be limited to a fair percentage share to be agreed by the Project Board based on the value of the Underlying Contracts that the Framework User has entered into against the overall value of the Underlying Contracts let under the Framework Agreements at the date of any claim by the Lead Organisation under the indemnity provided for in Clause 9.2, subject to the Lead Organisation being under a duty to mitigate any claims costs and expenses and subject to the Lead Organisation being liable to meet a share equivalent to its percentage share for any Underlying Contracts it has entered into under the Framework Agreements.
- 9.4 Financing for Underlying Contracts procured under the Framework Agreements by the Framework User will be entirely the responsibility of the Framework User and the Lead Organisation and SW RIEP will have no liability for any liabilities of the Framework User incurred pursuant to or under any Underlying Contract and the Framework User shall indemnify, defend and hold harmless the Lead Organisation and SW RIEP in accordance with Clause 5.2.

10 PROVISION OF NON CASH RESOURCE

- 10.1 The Framework User shall commit such non-monetary resources and assistance and in-kind support to the operation of the Framework Agreements as shall be reasonably and appropriately requested by the Lead Organisation from time to time.
- 10.2 No requirement or request shall be made of the Framework User under clause 10.1 which shall have the effect of incurring a disproportionate element of the costs of supporting the Framework Agreements or compelling it to incur unplanned resource demands for the purposes of making available to the Framework Agreements any such resources assistance or support as are referred to in Clause 10.1.

11 QUALITY

- 11.1 The Parties shall place a high priority on the importance of regular reporting including providing Performance Indicators and effective consultation.
- 11.2 The Lead Organisation shall be responsible for promoting high standards and regularity of such reporting from all Commissioning Organisations.
- 11.3 The Lead Organisation shall, as required, provide financial reports concerning the Framework to COPROP SW.

- 11.4 The Parties shall likewise place a high priority upon the importance of systems and procedures to deliver quality outcomes and shall co-operate and use their reasonable endeavours in procuring that high and effective standards of quality assurance of all aspects of the operation of the Framework are established generally understood and consistently maintained and observed.

12 TERM

- 12.1 This Agreement shall come into effect on the Commencement Date and shall continue in force, unless terminated earlier in accordance with the terms of this Agreement, until the expiry of the date of the Framework Agreement.

13 PROVISIONS ON TERMINATION

- 13.1 Either Party may withdraw from this Agreement and terminate its interests under this Agreement by giving three months notice in writing to the other Party.
- 13.2 Subject to clause 13.3 if the Framework User is in breach of its obligations under this Agreement and fails to comply with a written notice (a "Default Notice") from the Lead Organisation requiring it to remedy such breach within a reasonable time period, then the Lead Organisation may either give notice in writing terminating the Framework User's interest in this Agreement (a "Termination Notice") or suspend the Framework User from using the Framework Agreement (a "Suspension Notice") until such time as the breach which was the subject of the Default Notice has been remedied to the satisfaction of the Lead Organisation. A Termination Notice shall take effect four weeks from its date, unless the breach is remedied within such period.
- 13.3 Where the Lead Organisation wishes to issue a Default Notice in accordance with clause 13.2 it must first obtain the permission so to do of the Project Board, save that such permission shall not be required where the default of the Framework User has the potential to create or has already created significant financial and/or reputational impact upon the Lead Organisation.
- 13.4 If the Lead Organisation is in breach of its obligations under this Agreement and fails to comply with a written notice (a "Default Notice") from the Framework User requiring it to remedy such breach within a reasonable time period, then the Framework User shall be entitled to refer the matter for the attention of the Project Board who shall be entitled to request the Lead Organisation to remedy the default in such reasonable timescale as it deems appropriate in the circumstances.
- 13.5 The Agreement will be subject to review in the light of any legislative changes or organisational or administrative changes which affect its continued provision.
- 13.6 Upon termination of any Party's interest under this Agreement for any reason whatsoever the termination shall have no effect on the rights and liabilities of such Party under this Agreement, the Framework Agreements or the Underlying Contracts which have accrued by the date upon which such termination takes effect.

14 INTELLECTUAL PROPERTY

- 14.1 All Framework IPR shall vest in the Lead Organisation who shall make it available to public bodies as directed by SW RIEP.
- 14.2 Where the Framework IPR includes software designs documentation or other property subject to copyright and all other rights of a like nature conferred under the laws of the United Kingdom and all other countries of the world such intellectual property and all modifications enhancements and amendments made by the Parties to such property shall vest in the Lead

Organisation for the full term during which the copyright and any renewals or extensions shall subsist.

- 14.3 The Lead Organisation hereby grants to the Framework User a non-exclusive royalty free irrevocable licence to use operate copy and modify the Framework IPR for the purpose of this Agreement, the Framework Agreements and the Underlying Contracts or otherwise for its internal purposes (which licence shall allow it to authorise a third party to do likewise, where it contracts for the provision of works, supplies or services for those purposes from the third party). The Lead Organisation shall also as directed by SW RIEP be entitled to grant to such public bodies as SW RIEP shall determine a non-exclusive royalty free irrevocable licence to use operate copy and modify the Framework IPR for such purposes as SW RIEP shall specify in writing.
- 14.4 The Lead Organisation shall have the right during the Term to sell or otherwise remuneratively exploit the Framework IPR and shall be entitled to retain the first £100,000 of income generated arising from the aforementioned right. Any income generated over and above £100,000 will be used towards the costs of the Lead Organisation managing the Framework Agreements.
- 14.5 The Underlying Contract IPR in respect of each individual Underlying Contract shall be and shall remain vested in the Commissioning Organisation which places an Underlying Contract.
- 14.6 The Framework User shall grant to the Leading Organisation a non-exclusive royalty free irrevocable licence to use operate copy and modify the Underlying Contract IPR if reasonably necessary for the purpose of the Framework Agreements.

15 CONFIDENTIAL INFORMATION

- 15.1 Subject to Clause 17, each of the Parties shall at all times use its best endeavours to keep confidential (and to procure its respective employees agents consultants and sub-contractors shall keep confidential) all Confidential Information concerning this Agreement, the Framework Agreements, the Underlying Contracts or the business and affairs of the other Party which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Party.
- 15.2 For the purpose of this Agreement “Confidential Information” means any information imparted to a Party or its employees agents consultants or sub-contractors (“the Receiving Party”) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Party on the basis that it was to be kept confidential or is of commercial value in relation to this Agreement, the Framework Agreements or the Underlying Contracts but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.
- 15.3 This Clause 15 shall continue without limit of time and shall survive the termination of this Agreement.
- 15.4 This Clause 15 shall not prevent the disclosure of any Confidential Information which:
- 15.4.1 relates to this Agreement, the Framework Agreements or Underlying Contracts and which is reasonably disclosed for the furtherance of this Agreement, the Framework Agreements or Underlying Contracts or the operation of this Agreement, the Framework Agreements or Underlying Contracts, provided that the Party disclosing the information takes all steps that are commercially practicable to preserve the confidentiality of the information; or
- 15.4.2 is required by law to be disclosed by a Party; or

- 15.4.3 Is reasonably and necessarily disclosed by a Party to its professional advisers for purposes of the operation of this Agreement, the Framework Agreements or the Underlying Contracts subject to an agreement by its professional advisers to keep such information confidential.

16 COMPLIANCE WITH LEGISLATION

- 16.1 Throughout the Term the Parties shall comply with the requirements of any relevant statute, statutory rule or order, or other instrument having the force of law.
- 16.2 Without prejudice to the generality of Clause 16.1 any Underlying Contracts entered into by the Framework User pursuant to this Agreement shall be awarded by the Framework User in accordance with the provisions of the Framework Agreement.

17 FREEDOM OF INFORMATION ACT 2000 (“FOIA”) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (“EIR”)

- 17.1 The Lead Organisation and the Framework User acknowledges that each are subject to the requirements of the FOIA and the EIR and that they shall assist and co-operate with the other Party (at their own expense) to enable the other Party to comply with these information disclosure obligations.
- 17.2 Where the Lead Organisation or the Framework User receives a request for information in relation to information which it is holding on behalf of the other Party, it shall (and shall procure that its sub-contractors shall):
- (i) transfer the request for information to the other Party as soon as practicable after receipt and in any event within two working days of receiving a request for information;
 - (ii) provide the other Party with a copy of all information in its possession or power in the form that the other Party requires within five working days (or such other period as the other Party may specify) of the other Party requesting that information; and
 - (iii) provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 17.3 Where the Framework User receives a request for information which relates to this Agreement or the Framework Agreements, it shall inform the Lead Organisation of the request for information as soon as practicable after receipt and in any event at least two working days before disclosure.
- 17.4 Where the Framework User determines that information (including Confidential Information) must be disclosed pursuant to this Clause 17 it shall notify the Lead Organisation of that decision at least two working days before disclosure.
- 17.5 Each Party shall be responsible for determining in its absolute discretion whether any information:-
- (i) is exempt from disclosure under the FOIA or the EIR;
 - (ii) is to be disclosed in response to a request for information
- 17.6 The Lead Organisation and the Framework User acknowledges that the Other Framework Users and SW RIEP may be obliged under the FOIA or the EIR to disclose information

- (i) without consulting them, or
- (ii) following consultation with them and having taken their views into account.

18 GENERAL

- 18.1 Nothing contained or implied herein shall prejudice or affect a Party's rights and powers duties and obligations in the exercise of their functions as a local authority or other public body and all rights powers discretion's duties and obligations of the Parties under all public and private statutes bylaws orders and regulations and statutory regulations and statutory instruments may at all times be fully and effectually exercised as if the Parties were not Parties to this Agreement and as if this Agreement had not been made.
- 18.2 Subject to the express written authorities given to the Lead Organisation by SW RIEP no Party shall represent themselves as being an agent of the other Party or employee of the other Party or SW RIEP and shall not hold themselves out as such nor as having any power or organisation to incur any obligation of any nature express or implied on behalf of the other Party and SW RIEP and nothing in this Agreement shall operate so as to constitute any one Party an agent of the other Party or SW RIEP or employee of the other Party or SW RIEP unless otherwise provided for in this Agreement.
- 18.3 This Agreement shall be governed by and construed in accordance with English Law.
- 18.4 This Agreement is personal to the Parties and no Party shall assign transfer or purport to assign or transfer to any other persons any of its rights [or sub-contract] any of its obligations under this Agreement.
- 18.5 No amendment to this Agreement shall be valid unless agreed in writing and signed by all the Parties.
- 18.6 Any notice required or permitted to be given by a Party to the other Party under this Agreement shall be in writing and addressed to the appropriate authorised officer of that Party at its principal office.

19 COUNTERPARTS

- 19.1 This Agreement may be entered into in counterparts.
- 19.2 Each counterpart shall constitute an original of this Agreement but all the counterparts shall together constitute one and the same Agreement.

IN WITNESS hereof the parties hereto have executed this Agreement as a Deed the day and year first written

Signedin the capacity of [Authorised Signatory]

Signedin the capacity of [Authorised Signatory]

For and on behalf of [*Insert Organisation Name*]

Schedule A – Terms of Reference

SW RIEP (Regional Improvement & Efficiency Partnership) Project Board

Regional Contractors' Framework Governance Arrangements & Terms of Reference

- 1) Construction Framework South West has been established as part of the COPROP SW Construction (Property & Asset Management) Programme managed by the LIFT Southwest Regional Improvement and Efficiency Partnership (SW RIEP).
- 2) **Construction Framework South West VISION** - Construction Framework South West will provide a framework of excellent contractors who will positively engage with clients and their consultants to provide construction that is highly functional and represents good value
- 3) **Construction Framework South West MISSION**
 - Provide a framework to be used collaboratively by a wide range of public bodies in the South West
 - Provide buildings that match client requirements for functionality, effectiveness, sustainability, quality, whole life cost and aesthetic considerations
 - Establish an arrangement that provides a meaningful work-stream to contractors on the framework
 - Develop a sound Contractor base that is fully committed to the Framework
 - To ensure Contractors, Clients, Consultants & Designers work together in the most effective manner
 - Facilitate early project joint working of consultants/designers and clients with contractors, to enhance - design, 'buildability' and overall value from the budget available
 - Encourage users to jointly commission work and aggregate procurement to realise more value
 - Deliver economic business benefits and work to realise additional benefits including priority topics identified in Local Area Agreements
 - Efficient and timely delivery of building construction programmes
 - All parties involved with the Framework to be engaged in the continuous improvement of what the Framework will deliver
 - To provide a simple, 'easy to use and transparent process' to manage building construction programmes
- 4) The initial procurement and management of the Framework is to be supported by funding from SW RIEP in accordance with clause 4 of this Agreement.
- 5) It is a SW RIEP requirement that this project be managed by a Project Board reporting to the COPROP SW Programme Board, which is in turn responsible to SW RIEP itself. The Project Board is constituted to represent authorities around the region.
- 6) The Project Board will
 - i) agree the project plan, the funding bid, and the Project Initiation Document for the Framework project
 - ii) require regular reports from the Framework Management Team regarding the progress of the project, including in particular any variation from plan
 - iii) be responsible and accountable to the COPROP SW Programme Board and ultimately to SW RIEP for agreeing any variation to the project plan, financial projections (costs and benefits) or other key features of the project
 - iv) identify key project gateways and sign off (or otherwise) the project at each stage as appropriate

- v) ensure that the project is managed in the best interests of authorities and other collaborative partners around the region
- 7) The Lead Organisation (Devon County Council) will establish and host the Framework Management Team which will be responsible for:-
- a) Managing and undertaking the procurement process, and
 - b) Managing and operating the Framework once it has been procured
- 8) The Framework Management Team will be responsible and accountable for the day-to-day management during the Operational Phase and shall:
- i) Promote the use of the Framework
 - ii) Manage the Contractor Selection Process
 - iii) Maintain an effective 360° user survey performance management system to cover contractors, designers and users
 - iv) Identify / log processes to enhance the functionality of the Framework
 - v) Organise all user groups – contractors, designers, users (including those outside the Project Board)
 - vi) Monitor and report on use of resources
 - vii) Identify and promote initiatives to add value to the Framework's functionality
 - viii) Extend the scope of the Framework

Schedule B – Criteria for the selection and election of Members to represent Parties on the Project Board once the Framework is operational:

1. The Lead Organisation shall administer on a bi-annual basis the appointments of the Framework Users Project Board Members. For these purposes a year shall run from 1 June to 31 May inclusive.
2. Each of the Framework User and Other Framework Users shall nominate an officer who would be suitable to act as a representative on the Project Board. All nominated officers standing for election to the Project Board must have a proposed and seconded nomination.
3. Where the number of nominations in respect of the Framework User Project Board Members exceeds the number of places available on the Project Board, the Lead Organisation shall organise a ballot of the Framework User and Other Framework Users and each such organisation shall be entitled to one vote.

Schedule C – CFSW Framework Agreement with Providers – To be inserted at later date

Schedule D – SW RIEP Funding Letter – Attached see next page



15th August 2008

*Richard Buzzacott
Head of Business Transformation
Devon County Council*

Dear Richard,

I am writing to confirm that I have now signed off the Delivery Plan v1.8 for the Construction Framework South West (CFSW).

I understand that you have asked for formal confirmation of the delegated responsibilities arising from this. For all workstreams, the SW RIEP Management Board delegates the responsibility for developing and implementing the programme to a Programme Board, who normally then delegates to appropriate project teams.

In the case of the CFSW project, the RIEP delegates to the COPROP Southwest Programme Board and they in turn delegate to the project team: Devon County Council, as the host authority.

In terms of the funding, I confirm that SW RIEP has allocated and will make available £253k of funding for the project in 2008/09. The SW RIEP has also allocated further funding, up to the total in the (v1.8) Delivery Plan, on an indicative basis. When funding for 2009/10 and 2010/11 is released to SW RIEP by the Department for Communities and Local Government, we would expect to be able to confirm the 2009/10 and 2010/11 figures.

I have mentioned in a previous correspondence that we will be reviewing funding across the SW RIEPs programme towards the end of 2008/09 and would hope that there might be further funding for this project.

Could I finally mention that we very much appreciate the support and dedication being provided to this programme by the Devon County team and we look forward to helping to bring this work to fruition.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Morley'.

Julian Morley
Director SW RIEP

