DATED 2019

(1) **COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF**

(2) **[USER NAME]**

SOUTH AND MID WALES

**COLLABORATIVE CONSTRUCTION FRAMEWORKS**

**(SEWSCAP 3)**

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AGREEMENT FOR USER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This **AGREEMENT** is made on [***Date***]

**BETWEEN:**

1. **COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF** of County Hall, Atlantic Wharf, Cardiff, CF10 4UW (the “**Authority**” which expression includes any permitted successor to it and any successor to it in the exercise of its functions); and
2. **[USER NAME]** whose principal office is at [***address***] (the “**User**”) which expression includes any permitted successor to it and any successor to it in the exercise of its functions),

each a “**Party**” and together, the “**Parties**”,

**BACKGROUND**

1. The Authority, acting on behalf of itself and the other named **Contracting Authorities** (which term means the entities listed in Schedule 1 (*Potential Employers*) to this Agreement), has set up the South and Mid Wales Collaborative Construction Framework (“**SEWSCAP 3**”) which comprises framework agreements with the individual Framework Contractors as listed by Lot in Schedule 2 (*Framework Contractors*) to this Agreement;
2. The Authority has entered into a series of framework agreements with the individual Framework Contractors in standard form, the terms, conditions and other provisions of which are referred to as the “**Framework Agreement**”;
3. Under SEWSCAP 3, the Potential Employers may call-off services and construction works as set out in the Framework Agreement in connection with schools and other public building projects;
4. The User wishes to make use of SEWSCAP 3; and
5. The Authority requires that any User which wishes to use SEWSCAP 3 enters into this Agreement with the Authority to regulate the use and operation of the Framework Agreement.

IT IS AGREED as follows:

1. **Consideration and Intention to Create Legal Relations**
   1. The consideration for this Agreement shall be as follows –
      1. The Authority permits the User to use SEWSCAP 3 in accordance with the provisions of this Agreement, the provisions of the Framework Agreement, the Guidance and Applicable Law; and
      2. The User agrees to abide by and perform diligently and in full the obligations of the User set out in this Agreement, in the Framework Agreement and in the Guidance and to comply with Applicable Law in doing so.
   2. The Parties intend that this Agreement should have legal effect and should be enforceable by either of them as a contract.
2. **Interpretation**
   1. The following terms and expressions shall have the meanings ascribed to them:

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| **Agreement** | means this agreement, comprising the Clauses and Schedules; |
| **Applicable Law** | means any law, statute, proclamation, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972 (as , regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the User is bound to comply (including for the avoidance of doubt Acts, Measures and/or subordinate legislation of the National Assembly for Wales), to the extent that each is in force in England and Wales or in Wales only; |
| **Call-Off Contract** | means an agreement between one or more Potential Employers and a Framework Contractor to carry out works and/or services for a Construction Project under the terms of the Framework Agreement, in the relevant form set out at Schedule 2 of the Framework Agreement, and, where the context requires, includes a reference to the provisions of the relevant form of Call-Off Contract set out at Schedule 2 of the Framework Agreement; |
| **Construction Project** | any project or works for an Employer including the design, construction, refurbishment and re-construction of any buildings or facilities and associated services or works to complete the total proposed project including, for the avoidance of doubt, any and all phases of "early contractor involvement" or "two-stage" commissions where a contractor may be engaged initially in relation to design and then subsequently in relation to construction; |
| **Employer** | means any Potential Employer which enters into a Call-Off Contract or engages the Contractor in respect of a Construction Project; |
| **Guidance** | means the document “*21873CCC South and Mid Wales Collaborative Construction Framework for Schools and other Public Buildings (SEWSCAP3) – Guidelines and User Guide*” (as updated from time to time) provided by the Authority to the User prior to the User’s entry into this Agreement; |
| **Procurement Law** | means the Public Contracts Regulations 2015 (as amended) and Directive 2014/24/EU, as applicable, and in each case the relevant case law of the European Court of Justice and the UK Courts relating to the above legislation in so far as it constitutes binding precedent; |
| **Request to Enter into a Call-Off Contract** | as defined in paragraph 1.4 of Part 1 of Schedule 3 to the Framework Agreement; |
| **Selection Process** | means a Selection Process as defined in the Framework Agreement. |
| **Social Value** | as defined in the Framework Agreement; |
| **Website Information** | the information required by the Authority from time to time to update the SEWSCAP3 website. |

* 1. In this Agreement unless the context otherwise requires:
     1. references to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced. Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision;
     2. words in the singular shall include the plural and vice versa and a reference to a gender shall include a reference to all genders;
     3. a reference to a person shall include a reference to a firm, a body corporate or unincorporated association or to a person’s executors or administrators;
     4. a reference to a Clause or Schedule shall be a reference to a Clause or Schedule (as the case may be) of or to this Agreement unless otherwise specified;
     5. the headings are for convenience only and shall not affect the interpretation of any provision of this Agreement;
     6. unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party’s other rights and remedies;
     7. any phrase introduced by the words “including”,“includes”,“in particular” or “for example” or similar shall be construed as illustrative and shall not limit the generality of the related general words; and
     8. “writing” or “written” includes e-mail (provided that an error-free transmission report is received by the sender and no notification of malfunction or failure of transmission is received by the sender).

1. **Warranties and Exclusion of Liability**
   1. The User warrants that it has the necessary power and authority to use SEWSCAP 3 (including entering into Call-Off Contracts) and has carried out all necessary steps and actions (including obtaining necessary approvals whether internal or otherwise) so as to comply with its own procedures and the Applicable Law.
   2. The Authority and the User warrant to each other that their respective representative(s) who execute this Agreement are duly authorised and empowered to do so.
   3. The Authority gives no warranty and makes no representation about the ability of the User to use SEWSCAP 3 for the User’s intended purpose in accordance with Applicable Law (including Procurement Law). The User acknowledges this and further acknowledges that the User is wholly responsible for carrying its own due diligence to ensure that it is able to use SEWSCAP 2 for the User’s intended purpose in accordance with Applicable Law.
   4. Neither Party limits its liability to the other for death or personal injury arising from negligence, or for any liability arising from fraud or fraudulent misrepresentation.
   5. Subject to Clause 3.4 above, the Authority excludes any and all liability to the User including in contract, tort (including negligence), breach of statutory duty, Procurement Law, competition law, public law including judicial review, restitution, legitimate expectation or any other area of liability to the fullest extent permitted by law, for any loss, damage, costs or proceedings whatsoever arising out of –
      1. any claim or issue as to whether the User had the necessary power and authority and/or has complied with all applicable procedural requirements; and/or
      2. any claim or issue as to whether the User has complied with its obligations under Procurement Law,

in each case in relation to the User entering or proposing to enter into a Call-Off Contract and/or the User’s use of SEWSCAP 3.

* 1. The User acknowledges that the Authority shall not in any way be responsible or held liable for any loss, damage, costs or proceedings whatsoever arising out of the performance of any Call-Off Contract(s), such matters being between the User and the relevant Framework Contractor(s).

1. **Use of the Framework Agreement**
   1. The User must not commence any Selection Process or enter into any Call-Off Contract without the prior consent of the Authority.
   2. Before the User can commence a Selection Process, it must notify the Authority of –
      1. the nature of the works or services to be undertaken under the proposed Call-Off Contract;
      2. the estimated value of the proposed Call-Off Contract;
      3. the Lot which the User proposes to use;
      4. the Selection Process which the User proposes to use; and
      5. the award or tender procedure which the User proposes to use.
   3. The User shall in conducting any Selection Process and/or awarding any Call-Off Contract comply with the provisions of Clause 7 of the Framework Agreement (*Mechanism for Letting Call-Off Contracts*) and Schedule 3 to the Framework Agreement (*Mechanism for Letting Call-Off Contracts*).
   4. If the User is using Selection Process A (Direct Award) it shall only issue a Request to Enter into a Call-Off Contract (pursuant to and as defined in Schedule 3 to the Framework Agreement) to the Framework Contractor that has been established through objective and transparent Direct Award Criteria in the relevant lot that will provide the best price/quality ration. . If that Framework Contractor fails to accept the Request to Enter into a Call-Off Contract for any reason then the user may award the Call-Off Contract to the next highest-placed Framework Contractor under the above methodology.
   5. The user must notify its decision to all Framework Contractors on the relevant Lot including the Direct Award Criteria used and the reasons for its decision.
   6. The User shall not use any of the mechanisms set out under Clauses 7.3 (*Filling gaps in Selection Processes*), 7.4 (*Filling gaps in the Framework*) or 7.5 (*Ensuring genuine competition*) without first consulting the Authority and obtaining the Authority’s prior approval. The Authority may apply conditions to its approval, regarding how the User should conduct the Selection Process under any of the above provisions of the Framework Agreement and if so, the User shall comply with such conditions.
   7. Within seven (7) days after completion of any Selection Process (whether or not resulting in the award of a Call-Off Contract), the User shall provide the following information to the Authority –
      1. the works or services to be undertaken under the Call-Off Contract;
      2. the Lot or Lots involved in the Selection Process;
      3. the Selection Process used;
      4. the time allowed to Framework Contractors to respond to the User’s invitation to tender or request (as appropriate);
      5. the Framework Contractors who responded or submitted tenders (as appropriate);
      6. the Framework Contractors who were invited but did not respond or submit tenders (as appropriate);
      7. the form of contract awarded;
      8. the value of the contract awarded;
      9. the identity of the Framework Contractor to whom the Call-Off Contract has been or will be awarded; and
      10. if the Selection Process did not result in an award of a Call-Off Contract, the reasons for this.
   8. The User shall notify the Authority of any complaint, claim or challenge (whether or not involving legal proceedings) in relation to the User’s use of SEWSCAP 3 as soon as reasonably practicable after becoming aware of it.
   9. The User shall not do anything to prejudice the Authority’s procurement of SEWSCAP 3 and in particular the User shall not amend any the Framework Agreement or the form(s) of Call-Off Contract(s) without the prior written consent of the Authority, unless such amendments are for project specific reasons as indicated and permitted in the relevant documents.
   10. The User shall:
       1. always act professionally when using the SEWSCAP3 Framework Agreement, including when undertaking a Selection Process, awarding a Call-Off Contract, managing and enforcing a Call-Off Contract, throughout the duration of a Call-Off Contract, through the duration of this Agreement and when liaising with the Authority and/or Framework Contractors and/or other Users;
       2. actively contribute to the continuous improvement of SEWSCAP3;
       3. attend meetings with the Authority and/or other Users and/or Framework Contractors , workshops and/or other events as reasonably requested by the Authority;
       4. regularly update the Website Information; and
       5. share with the Authority and other Users its experiences in relation to SEWSCAP3 and information as to best practice when using SEWSCAP3.
2. **Expectations of the User**
   1. Upon the award of a contract the User will submit to the Authority the Client Satisfaction Questionnaire as part of the Key Performance Indicators within ten (10) working days when requested by the Authority once the project has been completed.
   2. The User shall in addition provide to the Authority such further information as may reasonably be requested by the Authority concerning the tender or award process for any Call-Off Contract(s), the performance of any Call-Off Contract(s), and/or the relevant Framework Contractor(s).
   3. The User shall provide information and data regarding Post-Occupancy Toolkit, Social Value initiatives and case studies relating to the call-off undertaken via the Framework.
   4. The User will be expected to participate with Continuous Improvement including but not limited to; task and finish groups and client engagement meetings.
   5. The User shall inform the Framework Management Team of communications being published in the public domain if the Framework is named.
3. **Confidentiality**
   1. The User agrees to keep all commercially sensitive information relating to the costs data of any Framework Contractors.
4. **Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales as they apply in Wales and the Courts of England and Wales (sitting at Cardiff) shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

1. **Costs and Expenses**

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

1. **No Partnership or Agency**
   1. Nothing in this Agreement shall be construed as creating a partnership.
   2. No Party shall be deemed to be an agent of any other Party and no Party shall hold itself out as having authority or power to bind any other Party in any way.
2. **Third Party Rights**

Nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999.

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| **Signed on behalf of the Authority by:**  **[Authorised Signatory]** | **Signed on behalf of [the User] by:**  **[Authorised Signatory]** |

**SCHEDULE 1**

**POTENTIAL EMPLOYERS**

1. The following Contracting Authorities (including any successor to any of them in the exercise of their statutory or public functions) may enter into Call-Off Contracts with the Contractor under this Agreement –
   * + Blaenau Gwent County Borough Council;
     + Bridgend County Borough Council;
     + The County Council of the City of Cardiff Council;
     + Caerphilly County Borough Council;
     + Carmarthenshire County Council;
     + Monmouthshire County Council;
     + Merthyr Tydfil County Borough Council;
     + Neath Port Talbot County Borough Council;
     + Newport City Council;
     + Pembrokeshire County Council;
     + Powys County Council;
     + Rhondda Cynon Tâf County Borough Council;
     + City and County of Swansea
     + Torfaen County Borough Council;
     + Vale of Glamorgan Council; and
     + The Roman Catholic Archdiocese of Cardiff, the Monmouth Diocesan Trust, the Church in Wales Diocese of Llandaff, Coleg y Cymoedd and Gower College Swansea.
2. In addition, the following contracting authorities may also utilise this Agreement -
   * + Welsh Government and its sponsored bodies and legal entities (including companies) owned or controlled by it (for example (but without limitation) Transport for Wales, Natural Resources Wales, the National Library of Wales and Cardiff Airport). A list of the bodies falling within this category may be found at <https://gov.wales/topics/improvingservices/devolution-democracy-delivery/register-of-public-bodies/?lang=en>
     + Welsh Higher Education bodies as described at [*http://www.wales.com/study/universities-wales*](http://www.wales.com/study/universities-wales)
     + Welsh Further Education Colleges as described at [*http://www.collegeswales.ac.uk/Find-a-College*](http://www.collegeswales.ac.uk/Find-a-College)
     + NHS Local Health Boards and NHS Trusts in Wales
     + Welsh Housing Associations/registered social landlords as described at <http://gov.wales/topics/housing-and-regeneration/publications/registered-social-landlords-in-wales/?lang=en>
     + Welsh Local Authorities as described at: <http://gov.wales/topics/localgovernment/unitary-authorities/?lang=en>
     + Schools, sixth-form colleges, foundation schools and academies in Wales (but not independent schools)
     + HM Inspectorate of Schools in Wales (Estyn)
     + The following central government departments, to the extent that they are based in or operate in Wales –
     + Cabinet Office
     + Wales Office
     + Department for Business, Energy & Industrial Strategy
     + Ministry of Housing, Communities and Local Government
     + Department for Digital, Culture Media and Sport
     + Department for Education
     + Department for Environment, Food and Rural Affairs
     + Department for Transport
     + Department for Work and Pensions
     + Department of Energy and Climate Change
     + Department of Health and Social Care
     + HM Treasury
     + Home Office
     + Ministry of Justice
     + Ministry of Defence
     + Agencies or sponsored bodies of the above central government bodies, to the extent that they are based in or operate in Wales, including (but not limited to) –
     + Office of National Statistics
     + Defence Support Group
     + Royal Mint
     + Crown Commercial Service
     + Driver and Vehicle Licensing Agency (DVLA)
     + Maritime and Coastguard Agency
3. This framework may also be used by -

* joint ventures or collaborations between Welsh Local Authorities or any combination of the bodies listed above; or
* any successors to any of the above bodies in the exercise of their statutory or public functions, including (without limitation), by reason of abolition, merger, boundary change, replacement or otherwise.

**SCHEDULE 2: FRAMEWORK CONTRACTORS**

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| **Lot 2 - Torfaen, Blaenau Gwent, Monmouthshire, Caerphilly  £250k - £1.5m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 2 | Knox and Wells |
| 3 | Ian Williams |
| 4 | Speller Metcalfe |
| 5 | Graham Facilities Management |
| 1st Reserve | Willis Construction Limited |
| 2nd Reserve | John Weaver Contractors Ltd |

***Note: this may vary from time to time due to suspension, replacement and termination in accordance with the terms of the Framework Agreement***

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| **Lot 1 - Mid Wales (Powys ONLY)  £250k - £1.5m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 2 | Knox and Wells |
| 3 | Ian Williams |
| 4 | Speller Metcalfe |
| 5 | Jones Bro (Henllan) |

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| **Lot 3 - RCT, Merthyr, Bridgend  £250k - £1.5m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 2 | Knox and Wells |
| 3 | Ian Williams |
| 4 | Speller Metcalfe |
| 5 | Graham Facilities Management |
| 1st Reserve | Willis Construction Limited |
| 2nd Reserve | John Weaver Contractors Ltd |

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| **Lot 4 - VoG, Cardiff and Newport £250k - £1.5m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 2 | Knox and Wells |
| 3 | Ian Williams |
| 4 | Speller Metcalfe |
| 5 | Graham Facilities Management |
| 1st Reserve | Willis Construction Limited |
| 2nd Reserve | John Weaver Contractors Ltd |

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| **Lot 5 - Mid Wales (Powys ONLY) £1.5m - £5m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 2 | Wynne and Sons |
| 3 | Midas Construction |
| 4 | Speller Metcalfe |
| 5 | Knox and Wells |
| 1st Reserve | Read Construction |
| 2nd Reserve | Wernick Buildings |

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| **Lot 6 - All £1.5m - £3m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 2 | Midas Construction |
| 3 | Tilbury Douglas Construction Limited |
| 4 | Knox and Wells |
| 5 | Speller Metcalfe |
| 1st Reserve | Andrew Scott Ltd |
| 2nd Reserve | Engie Regeneration |

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| **Lot 7 - All £3m - £5m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 1 | Morgan Sindall |
| 3 | Midas Construction |
| 4 | Tilbury Douglas Construction Limited |
| 5 | Knox and Wells |
| 1st Reserve | Andrew Scott Ltd |
| 2nd Reserve | Speller Metcalfe |
| 3rd Reserve | Engie Regeneration |

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| **Lot 8 - All £5m - £10m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 1 | Morgan Sindall |
| 3 | ISG Construction |
| 4 | Willmott Dixon |
| 5 | Midas Construction |
| 6 | BAM Construction |
| 1st Reserve | Tilbury Douglas Construction Limited |
| 2nd Reserve | Galliford Try |
| 3rd Reserve | Knox and Wells |

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| **Lot 9 - All £10m - £25m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 2 | Morgan Sindall |
| 3 | ISG Construction |
| 4 | Bouygues |
| 5 | Wynne and Sons |
| 6 | Willmott Dixon |
| 1st Reserve | BAM Construction |
| 2nd Reserve | Tilbury Douglas Construction Limited |
| 3rd Reserve | Andrew Scott |

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| **Lot 10 - All £25m - £100m** | |
| **Rank** | **Contractor** |
| 1 | Kier Construction |
| 1 | Morgan Sindall |
| 3 | ISG Construction |
| 4 | Bouygues |
| 5 | Willmott Dixon |
| 6 | BAM Construction |
| 1st Reserve | Tilbury Douglas Construction Limited |
| 2nd Reserve | Galliford Try |
| 3rd Reserve | Sir Robert McAlpine |

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| **Lot 11 - Demountable, Temporary Building (Hire or Purchase)  £0 - £100m** | |
| **Rank** | **Contractor** |
| 1 | Midas Construction |
| 2 | Ace Portable |
| 3 | Wernick Buildings |
| 4 | McAvoy Group |
| 5 | Portakabin |