

TERMS AND CONDITIONS

BACKGROUND

WHEREAS the organisation accepting these Terms and Conditions, herein referred to as the **Sub-contractor**, wishes to be accepted onto the Minor Works supply chain for the Framework Agreement to be eligible to deliver services to the Ordering Body via the Everything FM Framework pursuant to the Framework Agreement OJEU 378253-2020 (2020/S 087-209392).

NOW IT IS AGREED THAT

1 DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 DEFINITIONS

Call Off Contract: means a contract entered into between the Ordering Body, the Provider and the Sub-contractor for the provision of services pursuant to this agreement and the Framework Agreement, subject to the Call Off Terms and Conditions;

Call Off Terms and Conditions: means the call off terms and conditions set out on the EFM Minor Works Portal which the Sub-contractor is required to access and confirm acceptance off at the time of entering into these Terms and Conditions;

Confidential Information: means:

- (a) any information which has been designated as confidential by either Party in writing or that ought to reasonably be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, software code and associated documentation, Intellectual Property Rights and Know-How of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Laws; and
- (b) commercially sensitive information and does not include any information:
 - (i) which was public knowledge at the time of disclosure or any other confidential obligation;
 - (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - (iv) is independently developed without access to the Confidential Information

Data Protection Laws: means any applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including:

- (a) the General Data Protection Regulation, Regulation (EU) 2016/679;

- (b) the Data Protection Act 2018;
- (c) the Privacy and Electronic Communication (EC Directive) Regulations 2003;
- (d) any laws which implement any such laws; and
- (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

Default: means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the staff in connection with or in relation to the subject-matter of the agreement and in respect of which such Party is liable to the other;

E2BN: means the East of England Broadband Network;

Force Majeure: means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; pandemic; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring solely within the Sub-contractor's organisation including in any employee, partner, associate, affiliate, agent or contractor of theirs; or
- (b) the failure by the Sub-contractor to perform its obligations under any other contract; or
- (c) any occurrence consequent in whole or in part on the Sub-contractor being or delivering any part of the means of their delivery of the Services in a jurisdiction other than England;

Framework Agreement: means the agreement entered into by East of England Broadband Network (E2BN) and Place Group Limited on 18th August 2020 under OJEU 378253-2020 (MT ref: 220276) for the provision of services and incidental works and goods under specified CPV codes otherwise known as the Everything FM Framework;

Material Default: means any Default which is a material breach of this agreement;

Onboarding Questionnaire: means the questionnaire completed by the Sub-contractor on the Everything FM Minor Works Portal;

Ordering Body: means any party named as such in any Call Off Contract;

Parties: the Provider and Sub-contractor, and “**Party**” shall be construed accordingly

Provider: means Place Group Limited trading as Schools' Buying Club (company number 04395705) whose registered address is at The Regent, Chapel Street, Penzance, Cornwall TR18 4AE

1.2 INTERPRETATION

- 1.2.1 Clause and paragraph headings shall not affect the interpretation of this agreement.

- 1.2.2 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.2.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.2.4 A reference to a statute or statutory provision shall include all subordinate legislation made under that statute.
- 1.2.5 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 1.2.6 A reference to **writing** or **written** includes fax and email
- 1.2.7 Any obligation in this agreement on a Party not to do something includes an obligation not to agree or allow that thing to be done.
- 1.2.8 Unless specified otherwise, the references to Clauses are to the Clauses of this agreement.
- 1.2.9 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 DURATION

This agreement commences on the date it is entered into and shall terminate on the later of

- 2.1 expiry of the Framework Agreement;
 - 2.2 the expiry of all Call Off Contracts placed with the Sub-contractor,
- unless it is terminated earlier in accordance with the provisions of this agreement.

3 SUB-CONTRACTOR OBLIGATIONS

- 3.1 The Sub-contractor shall observe and perform its obligations under the terms of any Call Off Contract it enters into via the Everything FM Framework.
- 3.2 The Sub-contractor shall have the option of a voluntary commitment to providing a social value contribution of 1% of the value of each Call Off Contract awarded to the Sub-contractor to a collective social value fund theme determined by the Ordering Body. This is not mandatory, and the Sub-contractor may wish to detail other social value initiatives they have in place with regard to their social value activity as an organisation.
- 3.3 The Sub-contractor shall keep and maintain full and accurate records and accounts of the operation of all Call Off Contracts and the amounts paid by the Ordering Body for a period of six (6) years, and shall allow reasonable access to and the auditing of such records and other documents (including invoices) relating to any Call Off Contract by the Ordering Body and Provider as necessary, on an open book basis.

4 NO GUARANTEE OF BUSINESS

- 4.1 The Sub-contractor acknowledges and agrees that:

- 4.1.1 joining the Minor Works supply chain for the Framework Agreement does not guarantee the Sub-contractor any business; and
- 4.1.2 the Provider is not obliged to put the Sub-contractor forward to the Ordering Body in respect of any services.

5 DUE DILIGENCE

- 5.1 The Sub-contractor acknowledges that it:
 - 5.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Provider;
 - 5.1.2 has raised all relevant due diligence questions with the Provider before acceptance of these Terms and Conditions; and
 - 5.1.3 accepts these Terms and Conditions, and will enter into any Call Off Contract, in reliance on its own due diligence alone.

6 PROVIDER'S TERMINATION RIGHTS

- 6.1 The Provider may terminate this agreement with immediate effect by giving notice in writing to the Sub-contractor if either Framework Agreement is terminated.
- 6.2 The Provider may terminate this agreement with immediate effect by giving notice in writing to the Sub-contractor if the Sub-contractor suffers an event of insolvency.
- 6.3 The Sub-contractor shall notify the Provider promptly if the Sub-contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("Change of Control"). The Provider may terminate this agreement by notice in writing with immediate effect within six months of:
 - 6.3.1 being notified that a Change of Control has occurred; or
 - 6.3.2 where no notification has been made, the date that the Provider becomes aware of the Change of Control;

if such Change of Control has a material, detrimental effect on the Sub-contractor's ability to perform its obligations under this agreement, or results in a conflict of interest, but shall not be permitted to terminate where a written approval for the Change of Control was granted prior to the Change of Control (such approval being granted only if the proposed Change of Control will not prejudice the fairness and transparency of the procurement which led to the Sub-contractor entering into this agreement).

7 TERMINATION ON DEFAULT

- 7.1 Either Party may terminate this agreement by giving written notice to the other with immediate effect if the other Party commits a Material Default and if:
 - 7.1.1 the Party in Material Default has not remedied the Material Default to the satisfaction of the other Party within such reasonable period as may be specified by the Party not in Material Default, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
 - 7.1.2 the Material Default is not capable of remedy.

8 CONSEQUENCES OF TERMINATION

- 8.1 Save as otherwise expressly provided in this agreement:

- 8.1.1 termination or expiry of this agreement shall be without prejudice to any rights, remedies or obligations accrued under the agreement prior to termination or expiration and nothing in the agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 8.1.2 termination of the agreement shall not affect the continuing rights, remedies or obligations of the Provider or the Sub-contractor under clauses 6, 7, 8 or 9.
- 8.1.3 following the service of a termination notice given in accordance with this agreement, the Sub-contractor shall continue to be under an obligation to comply with the terms of any Call Off Contract and to ensure that there is no degradation in the standards of service until the termination of the Call Off Contract.

9 LIABILITIES AND INSURANCE

- 9.1 The Provider shall not be responsible for any acts or omissions of the Ordering Body.
- 9.2 Nothing in this agreement shall be construed to limit or exclude either Party's liability for:
 - 9.2.1 death or personal injury caused by its negligence;
 - 9.2.2 fraud or fraudulent misrepresentation;
 - 9.2.3 breach of any obligation as to title implied by statute.
- 9.3 Should the Sub-contractor breach any Data Protection Laws, the Sub-contractor shall be liable to the Provider for:
 - 9.3.1 all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation paid to data subjects, demands and legal and other professional costs, incurred by the Provider which arise out of or in connection with any breach by the Sub-contractor of any Data Protection Laws; and
 - 9.3.2 all amounts paid or payable by the Provider to a third party which would not have been paid or payable if the Sub-contractor's breach of any Data Protection Laws had not occurred.
- 9.4 Except as otherwise stated in this Contract, the annual aggregate liability of either Party under this agreement shall in no event exceed the values to which the Sub-contractor is insured for such risks, provided required insurances are maintained in line with this agreement.
- 9.5 The Sub-contractor shall effect and maintain the following insurances for the duration of the agreement and for a period of six years following the expiry of the last Call Off Contract in relation to the performance of this agreement and/or any Call Off Contract:
 - 9.5.1 public liability insurance adequate to cover all risks in the performance of this agreement and/or any Call Off Contract from time to time such amount to be a minimum of five hundred thousand (£500,000) pounds for each and every claim; and
 - 9.5.2 employers' liability insurance with a minimum limit of indemnity as required by law from time to time.
- 9.6 The Sub-contractor shall provide the Provider with suitable evidence or copies of all such policies of insurance on an annual basis or a broker's verification of insurance to demonstrate that the appropriate cover is in place together with receipts or other

evidence of payment of the latest premiums due under those policies promptly following any additional requests by the Provider.

- 9.7 Any excess, deductibles or increase in premium under any insurance referred to in this Clause 9 shall be the sole and exclusive responsibility of the Sub-contractor.
- 9.8 The terms of any insurance or the amount of cover shall not relieve the Sub-contractor of any liabilities arising under this agreement or any Call Off Contract.

10 CONFIDENTIALITY

- 10.1 Each Party undertakes that it shall not at any time during this agreement, and for a period of two years after termination or expiry of this agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by Clause 10.2.
- 10.2 Each Party may disclose the other Party's Confidential Information:
- 10.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this agreement. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's Confidential Information comply with this Clause 10; and
- 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 No Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 10.4 Notwithstanding this Clause 10, any information supplied by the Sub-contractor to the Provider in connection with this agreement and/or any Call Off Contract can be disclosed to the Ordering Body and E2BN.

11 WARRANTIES AND REPRESENTATIONS

The Sub-contractor warrants and represents that:

- 11.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under this agreement;
- 11.2 the agreement is executed by a duly authorised representative of the Sub-contractor;
- 11.3 in entering the agreement it has not committed any fraud or corrupt act;
- 11.4 as at the date of entering into this agreement all information, statements and representations submitted via the Everything FM Minor Works Portal are true, accurate and not misleading save as may have been specifically disclosed in writing to the Provider prior to entering into this agreement under the Framework Agreement and it will advise the Provider 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;
- 11.5 as at the date of entering into this agreement 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 its assets which will or might materially affect its ability to perform its obligations under the agreement;

- 11.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under any Call Off Contract awarded under the Framework Agreement;
- 11.7 as at the date of entering into this agreement no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Sub-contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Sub-contractor's assets or revenue;
- 11.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the agreement;
- 11.9 all services provided under the agreement shall be provided and carried out by appropriately experienced, qualified and trained Staff with due skill, care and diligence;
- 11.10 it shall comply with the Law;
- 11.11 save as may have been specifically disclosed in writing to the Provider prior to the execution of this agreement it will promptly advise the Provider of any fact, matter or circumstance of which it may become aware which would render any information, statement or representation made or referred to in this Clause 11 to be or to have become false or misleading; and
- 11.12 in the three (3) years prior to the date of entering into this agreement:
 - 11.12.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with all required laws and regulations;
 - 11.12.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - 11.12.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the agreement.
- 11.13 it confirms all necessary and reasonable steps necessary steps have been taken with regards to Modern Slavery, including compliance with the Modern Slavery Act 2015 where applicable.

12 NOTICES

- 12.1 Any notice given to the Sub-contractor under or in connection with this Contract shall be in writing and shall be sent by email to the address(es) as submitted via the Everything FM Minor Works Portal.
- 12.2 Any notice shall be deemed to have been received if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 20.2.3 business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt:
- 12.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13 GOVERNING LAW AND JURISDICTION

13.1 The Sub-contractor and the Provider accept the exclusive jurisdiction of the English courts and agree that this agreement is to be governed by and construed solely according to English Law.

14 NO PARTNERSHIP OR AGENCY

14.1 The Parties are independent businesses and are not partners, principal and agent or employer and employee and this agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the Parties shall have, nor shall represent that they have, any authority to make any commitments on the other Party's behalf.

15 PUBLICITY AND BRANDING

15.1 The Sub-contractor shall not make any press announcements or publicise this agreement or its contents in any way without the prior written consent of the Provider.

16 ALIENATION

16.1 This agreement is personal to the Sub-contractor who shall not assign, novate or in any other way dispose of the whole or any part of this agreement or of any Call Off Contract, aside from any sub-contracting agreed as part of any individual Call Off Contract.

16.2 The Provider shall be entitled to assign this agreement to any person to whom the Framework Agreement is assigned.

17 WAIVER

17.1 The failure of either Party to insist upon strict performance of any provision of this agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this agreement.

17.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

17.3 A waiver of any right or remedy arising from a breach of this agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this agreement.

18 SEVERABILITY

18.1 If any provision of this agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this agreement had been executed without the invalid provision.

18.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this agreement the Provider and the Sub-contractor shall promptly commence good faith negotiations to remedy such invalidity.

19 THIRD PARTY RIGHTS

19.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 for any person or party who is not a Party to this agreement to enforce any term of this agreement.

20 ENTIRE AGREEMENT

- 20.1 This agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.