

FRAMEWORK AGREEMENT FOR THE PROVISION OF INSTALLATION OF TRAFFIC SIGNALS

DN372040

VOLUME 0 DEED OF AGREEMENT AND CONDITIONS OF CONTRACT

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Dated

DEED OF AGREEMENT

Concerning Works for the Installation of Traffic Signals

Between

SOMERSET COUNTY COUNCIL

And

[]

“Schedule 6a Civils Activity Schedule Master” and “Schedule 6b Traffic Signals Activity Schedule Master”, “Schedule 7 Contract Data Part 2” and “Schedule 8 Selection and Award” respectively, “Schedule 9 - Completed Tender Assessment Sheet Financial (For Contract Data Part 2)”

4. The conditions of contract and other documents which are incorporated into and form part of this framework contract contain all the terms which the Employer and the Supplier have agreed in relation to the subject matter of this framework contract, and supersede any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.
5. If there is any ambiguity or inconsistency in or between the documents comprising this framework contract, the priority of the documents is in accordance with the following sequence:
 - 5.1 this Deed of Agreement in this Volume 0;
 - 5.2 the Contract Data part one contained in this Volume 0 (including the Z clauses)
 - 5.3 the documents referred to in the Contract Data part one
 - 5.4 the Contract Data part two contained in this Volume 0
 - 5.5 the documents referred to in the Contract Data part two
 - 5.6 the conditions of contract of the NEC3 Framework Contract April 2013 (excluding the Z clauses)
 - 5.7 Volume 2: Works Information (General)
 - 5.8 Volume 3: Works Specification
 - 5.9 Volume 1: Instructions to Applicants
 - 5.10 Volume 4: Method of Measurement
 - 5.11 the Framework Agreement Civils Activity Schedule Master and Traffic Signals Activity Schedule Master
 - 5.12 Volume 5: Returnable Schedules

THIS AGREEMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed as a deed by [NAME OF COMPANY]

acting by [] (print name of Director)
..... signature of Director

in the presence of
[] (print name of Witness)
..... signature of Witness
..... Address of Witness
.....
.....

The Common Seal of
SOMERSET COUNTY COUNCIL
was affixed in the presence of:

[] (print name of authorised signatory)
..... signature
Authorised Signatory

FRAMEWORK CONTRACT - CONTRACT DATA PART ONE - DATA PROVIDED BY THE *EMPLOYER*

The Data which will apply to all work under the Framework Contract is:

The conditions of this framework contract are **the clauses of the NEC3 Framework Contract April 2013** as amended and added to by the Z clauses included under Option Z.

- The ***Employer*** is;

Name: Somerset County Council

Address: County Hall, The Crescent, Taunton, Somerset, TA1 4DY.

- The ***Framework Information*** is in section 2.1 of Volume 1: Instructions to Applicants, the conditions of contract including the Z clauses included under Option Z, and Schedule C of this Volume 0;
- The ***Scope*** is the supply of services and works (including, where applicable and without limitation, design, construction and the production of associated documentation) in relation to new traffic signals, replacement of traffic signals and associated infrastructure improvements, as more particularly described in Volume 2: Works Information (General), and Volume 3: Works Specification;
- The ***Selection Procedure*** is found in Schedule C of this Volume 0;
- The ***Quotation Procedure*** is found in Schedule C of this Volume 0;
- The ***commencement date*** is the date of this framework contract.
- The ***end date*** is 4 years after the ***commencement date***.

The Data which will apply to all Package Orders is:

The Contract Data part one entries from the NEC3 Engineering and Construction Contract April 2013 (Option B) as set out in Schedule A of this Volume 0.

Framework contract - Contract Data Part Two - Data provided by the *Supplier*

The Data which will apply to all work under the Framework Contract is

- The ***Supplier*** is

Name:

Address:

- The ***quotation information*** is in

The Data which will apply to all Package Orders is:

The Contract Data part two entries from the NEC3 Engineering and Construction Contract April 2013 (Option B) as set out in Schedule A of this volume 0.

Framework contract - Option Z - amendments and additions to existing clauses of the NEC3 Framework Contract (April 2013)

The clauses of the NEC3 Framework Contract April 2013 are amended and added to by the following Z clauses.

ADDITIONAL OR AMENDED CONDITIONS OF CONTRACT (Z CLAUSES)

Z1	Amendments to Core Clauses
	Identified and defined terms 11
	<p>Clause 11.2 is amended to include the following after 11.2(5)</p> <p>(6) The Tender is the tender dated [DATE] submitted by the Supplier to the Employer.</p> <p>(7) Commercially Sensitive Information: the information listed in Schedule 8 of Volume 5 (Returnable Schedules) comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.</p> <p>(8) Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives and advisors (together "Representatives"), to the other party and that party's Representatives in connection with this framework contract, including but not limited to:</p> <p>a) any information that would be regarded as confidential by a reasonable business person relating to:</p> <p>(i) the business, affairs, customers, suppliers or plans of the disclosing party; and</p> <p>(ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;</p> <p>b) any information developed by the parties in the course of carrying out this framework contract;</p> <p>c) personal Data;</p> <p>d) any Commercially Sensitive Information.</p>

		<p>(9) Data Controller: shall have the same meaning as set out in the Data Protection Legislation.</p> <p>(10) Data Processor: shall have the same meaning as set out in the Data Protection Legislation.</p> <p>(11) Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.</p> <p>(12) Data Subject: shall have the same meaning as set out in the Data Protection Legislation.</p> <p>(13) GDPR: the General Data Protection Regulation ((EU) 2016/679).</p> <p>(14) Personal Data: shall have the same meaning as set out in the Data Protection Legislation.</p> <p>(15) UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.</p>
Z1B	Supplier Due Diligence	
	Z1B.1	<p>The Supplier shall be deemed to be fully aware of and shall be deemed to have taken full account of the nature and extent of the duties, obligations, responsibilities and requirements to be undertaken in relation to the Work Packages ordered pursuant to this framework contract. Without limitation to the generality of the foregoing or any other provision of this framework contract, the Supplier shall be deemed to have, and warrants that it has:</p> <p>Z1B.1.1 thoroughly examined, checked and satisfied itself as to the adequacy, correctness and suitability of all information concerning the framework contract (and Work Packages to be ordered under it) made available to the Supplier prior to execution of this framework contract ("the Disclosed Data");</p> <p>Z1B.1.2 generally obtained for itself all necessary information as to:</p> <p>the risks, contingencies and all other circumstances which may influence or affect its obligation to carry out the Work Packages; and</p>

		<p>any other factors which would affect its decision to enter into this framework contract or the terms on which it would do so.</p> <p>satisfied itself that it fully understands the nature and the extent of its obligations pursuant to this framework contract.</p>
	Z1B.2	<p>No liability shall attach or be attributed to the Employer in respect of anything made available to the Supplier prior to the date hereof including any materials, drawings, documents and related to the service or any forecasts or other matters which are or may be relevant to the works and services and the Employer gives no warranty as to the completion or accuracy whatsoever. The Disclosed Data includes, without limitation, all such materials, drawings, documents and data which were provided or made available to the Supplier in connection with the invitation to tender in respect of this framework contract.</p>
Z1C	Non-exclusivity	
	Z1C.1	<p>The Supplier acknowledges that, in entering into this framework contract, no form of exclusivity or volume guarantee has been granted by the Employer and that the Employer is at all times entitled to enter into other contracts and arrangements with other suppliers or other contractors for the provision of any or all works and services which are the same as or similar to the Work Packages.</p> <p>The Employer is entitled to abandon or re-start any Request for Quotation for any reason in its absolute discretion with no liability to the Supplier for costs, loss of profit, expenses, damages or any other liability whatsoever</p>
Z1D	Supplier warranties and representations	
	Z1D.1	<p>The Supplier warrants and represents to the Employer that:</p> <ul style="list-style-type: none"> • he 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 to perform its obligations under the framework contract and will have the same before carrying out any Work Packages; • the framework contract shall be executed by a duly authorised representative of the Supplier; • in entering into the framework contract he has not committed and will not commit any offences under the Bribery Act 2010 or the Modern Slavery Act 2015; • he has in place adequate procedures to prevent bribery and corruption as contemplated by section 7 of the Bribery Act 2010. • as at the date of this framework contract, all information, statements and representations

		<p>contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Employer before the execution of the framework contract and he will promptly advise the Employer of any fact, matter or circumstance of which he may become aware during the term of this framework contract that would render any such information, statement or representation to be false or misleading;</p> <ul style="list-style-type: none"> • he has not and shall not adjust or fix pricing in accordance with any agreement or arrangement with any third party or otherwise collude in any way with any such third party; • no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of his knowledge and belief, pending or threatened against him or any of his assets that will or might affect his ability to perform his obligations under the framework contract; • he is not acting and has not acted in contravention of the Modern Slavery Act 2015; • he is not subject to any contractual obligation, compliance with which is likely to have an effect on his ability to perform his obligations under this framework contract; and • no proceedings or other steps have been taken and not discharged (nor, to the best of his knowledge, are threatened) for the winding up of the Supplier or for his dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
Z1E	Interpretation	
	Z1E.1	<p>Framework Contract Activity Schedule means the activity schedule incorporated in this Framework Contract which for the avoidance of doubt shall be the maximum prices that can be charged by the Supplier for Work Packages as set out in the <i>quotation procedure</i>.</p>
Z2	Confidentiality	
	Z2.1	<p>Subject to clause Z2.2, each party shall keep the other party's Confidential Information confidential and shall not:</p> <ul style="list-style-type: none"> (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this framework contract; or (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause Z2.

	Z2.2	<p>The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:</p> <ul style="list-style-type: none"> (a) which the other party confirms in writing is not required to be treated as Confidential Information; (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality; (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs; (d) which is in or enters the public domain other than through any disclosure prohibited by this framework contract; (e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or (f) which is disclosed by the Employer on a confidential basis to any central government or regulatory body.
	Z2.3	<p>A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this framework contract, provided that:</p> <ul style="list-style-type: none"> (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this framework contract, (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause Z2.3
	Z2.4	<p>The provisions of this clause Z2 shall survive for a period of six (6) years from the <i>end date</i>.</p>
Z3 Data processing		
	Z3.1	<p>Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause Z3 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause Z3, Applicable Laws means (for so long as and to</p>

		the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
	Z3.2	The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the data controller and the Supplier is the data processor.
	Z3.3	Without prejudice to the generality of clause Z3.1, the Employer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this framework contract
	Z3.4	<p>Without prejudice to the generality of clause Z3.1 the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this framework contract:</p> <ul style="list-style-type: none"> (a) process that Personal Data only on the written instructions of the Employer, unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is so required, it shall promptly notify the Employer before processing the Personal Data, unless prohibited by the Applicable Laws; (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

		<ul style="list-style-type: none"> (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled: <ul style="list-style-type: none"> (i) the Employer or the Supplier has provided appropriate safeguards in relation to the transfer; (ii) the Data Subject has enforceable rights and effective remedies; (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data; (d) notify the Employer immediately if it receives: <ul style="list-style-type: none"> (i) a request from a Data Subject to have access to that person's Personal Data; (ii) a request to rectify, block or erase any Personal Data; (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner); (e) assist the Employer in responding to any request from a Data Subject and in ensuring compliance with the Employer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; (f) notify the Employer immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this framework contract; (g) at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination or expiry of the framework contract unless required by the Applicable Laws to store the Personal Data; (h) maintain complete and accurate records and information to demonstrate its compliance with this clause Z3;
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	Z3.5	The Supplier shall indemnify the Employer against any losses, damages, cost or expenses incurred by the Employer arising from, or in connection with, any breach of the Supplier's obligations under this clause Z3.
	Z3.6	Where the Supplier intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this framework contract, it shall: <ul style="list-style-type: none"> (a) notify the Employer in writing of the intended processing by the Sub-Contractor; (b) obtain prior written consent to the processing; (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause Z3.
	Z3.7	Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause Z3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this framework contract).
	Z3.8	The provisions of this clause shall apply during the continuance of the framework contract and indefinitely after its expiry or termination.
Z4 – Z7		Not used.
Z8 Subcontracting and people		
	Z8.1	The <i>Supplier</i> provides to the <i>Employer</i> such information and documentation as the <i>Employer</i> reasonably requires from time to time to satisfy him that all persons to be engaged by the <i>Supplier</i> to carry out the Work Packages or any part thereof are competent to carry out the Work Packages or such part and have suitable qualifications and the appropriate level of experience and training and have appropriate certification from an appropriate approved body.
	Z8.2	The <i>Supplier</i> notifies the <i>Employer</i> of any impending dispute with any Subcontractor and/or employee who could affect the operation and delivery of the Work Packages.
	Z8.3	If the <i>Employer</i> considers that the <i>Supplier</i> is at any time providing insufficient or inappropriately qualified or experienced staff, the <i>Supplier</i> complies at its own cost with any reasonable instructions from the <i>Employer</i> regarding the matter.
Z9 Supervision		
	Z9.1	In the event of the <i>Supplier</i> having substantially failed to comply with this Framework Contract, hindered the <i>Employer</i> and/or broken a health or safety regulation, the <i>Employer</i> may issue a notice to the <i>Supplier</i> indicating the intention to appoint a person to monitor and supervise the <i>Supplier</i> until such time as the <i>Supplier</i> shall have demonstrated to the reasonable satisfaction of the <i>Employer</i> that it is capable of performing its obligations under this Framework Contract. The <i>Supplier</i> compensates the <i>Employer</i> for all costs incurred in connection with such supervision (including, without limitation, the relevant administrative expenses and an appropriate sum in respect of general staff costs and overheads).

Z10-Z11		Not used
Z12		Dispute Resolution Procedure
	Z12.1	The dispute resolution procedure set out in the conditions of contract applicable to the Work Packages shall also apply to any disputes arising under this framework contract once endeavours to resolve any such dispute informally and at senior level between the parties have been exhausted.
Z13		The Contracts (Rights of Third Parties) Act 1999
	Z13.1	Any right of any person to enforce the terms of this Framework Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.
Z14		Delegation
	Z14.1	The <i>Employer</i> may delegate any of the <i>Employer's</i> actions in this Framework Contract and may cancel any delegation.
Z15 – Z16		Not Used
Z17		Price adjustment for inflation
	Z17.1	The rates and lump sums in the Framework Contract Price List shall be adjusted for inflation in accordance with this clause at the first anniversary of the <i>commencement date</i> (as defined in the Contract Data Part One) and annually thereafter (each such date being an “Adjustment Date”) Any rates and lump sums included within a Work Package shall remain fixed for the duration of the delivery of the Work Package.
	Z17.2	At the commencement of each such relevant period the rates and lump sums in the Framework Contract Price List are adjusted in accordance with this Clause Z17.
	Z17.3	Compensation events for Package Orders are paid in accordance with the terms of the Package Order and no adjustments are made pursuant to this Clause Z17.
	Z17.4	<p><u>General Principles</u></p> <p>Adjustments to rates and lump sums in the Framework Contract Price List pursuant to this Clause Z17 may be negative as well as positive and may therefore result in an increase or a decrease in the rates and lump sums in the Framework Contract Price List, items tendered as percentages in the Framework Contract Price List are not eligible for adjustment. Only those rates and lump sums tendered as Pound Sterling are adjusted for inflation/deflation in accordance with this Clause Z17 and</p> <p>“Base Date” means the <i>commencement date</i> (as defined in Contract Data Part One)</p>
	Z17.5	<p><u>Works Rates</u></p> <p>The percentage adjustment to the Works Rates (“Works Rate Percentage Adjustment”) is the sum of the Weighted Percentage</p>

		<p>Adjustments calculated using the BCIS Price Adjustment Formulae Indices (Civil Engineering) 1990 Series and Specialist Engineering Formulae - 'Series 3' as set out below:</p> <p>The Weighted Percentage Adjustment for each index referred to above is calculated as follows: $wr = (A - B) \div B \times 100 \times W$ <p>where: wr = Weighted Percentage Adjustment at relevant Adjustment Date B = Relevant Index at Base Date A = Relevant Index at relevant Adjustment Date W = Relevant Index Weighting</p> <p>and where each Relevant Index and its respective Relevant Index Weighting is set out below:</p> <p>BCIS PRICE ADJUSTMENT FORMULAE INDICES (CIVIL ENGINEERING) 1990 SERIES AND SPECIALIST ENGINEERING FORMULAE - 'SERIES 3'</p> <table border="1"> <thead> <tr> <th>INDEX NO.</th><th>DESCRIPTION</th><th>WEIGHTING</th></tr> </thead> <tbody> <tr> <td>E1</td><td>Labour</td><td>0.250</td></tr> <tr> <td>E2</td><td>Materials</td><td>0.550</td></tr> <tr> <td>2</td><td>Plant & Road Vehicles</td><td>0.075</td></tr> <tr> <td>10</td><td>DERV Fuel</td><td>0.025</td></tr> <tr> <td></td><td>Non Adjustable</td><td>0.100</td></tr> <tr> <td></td><td>Total</td><td>1.000</td></tr> </tbody> </table> </p>	INDEX NO.	DESCRIPTION	WEIGHTING	E1	Labour	0.250	E2	Materials	0.550	2	Plant & Road Vehicles	0.075	10	DERV Fuel	0.025		Non Adjustable	0.100		Total	1.000
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	Z17.6																						
Z18-Z103		<u>Not used</u>																					
Z104	Audit and Compliance																						
	Add new Clauses as follows:																						
	104.1	The <i>Supplier</i> co-operates fully and in a timely manner with any investigation relating to security, regulatory or public law compliance and/or probity which is carried out by or on behalf of the <i>Employer</i> including any investigation proposed or being carried out by the Local Government Ombudsman (pursuant to Section 26 of the Local Government Act 1974 or otherwise)) or any auditor (whether internal or external) of the <i>Employer</i> (whether made prior to the termination or expiry of the framework contract or any time within a period of eighteen months thereafter) and uses its best endeavours to make any staff																					

		<p>(whether of the <i>Contractor</i> or any Subcontractor) or Subcontractors identified by the <i>Employer</i> or any auditor available to be interviewed by the <i>Employer</i> or auditor for the purposes of, and uses reasonable endeavours to ensure that they co-operate with, the investigation. Subject to any legal restriction on their disclosure, the <i>Supplier</i> provides all documents, records or other material of any kind which are reasonably required by the <i>Employer</i> or any auditor for the purposes of the investigation and provides, or procures the provision of, any oral or written explanation relating to the same. The <i>Employer</i> has the right to retain any such material for use in connection with the investigation and provides the <i>Supplier</i> with a copy of any material retained.</p>
104.2		<p>Without prejudice to Clause 104.1, the <i>Supplier</i> permits and co-operates fully with the <i>Employer</i>, his agent and/or any auditors (whether internal or external) to ensure that the <i>Employer</i>, his agent and/or any such auditors have access at reasonable hours upon giving the <i>Supplier</i> reasonable notice, including the right to enter at all reasonable times (provided that the <i>Supplier</i> allows immediate access without notice if required) upon any property used by the <i>Supplier</i> to perform the Framework Contract or any part of it including without limitation any training facilities or places where work is otherwise being prepared in connection with the Framework Contract, for the following purposes</p> <ul style="list-style-type: none"> • to examine and take copies of any and all documents and information in the possession, custody or control of the <i>Supplier</i> relating to this Framework Contract on an open book basis, including any computer data held for the purposes of the Framework Contract and any books and records (including without limitation all financial records and all documents, computer records or data relating to time recording of staff in relation to the performance of the Framework Contract and any work sheets). The <i>Supplier</i> procures that any person acting on its behalf, including any Subcontractor, any subcontractor of a Subcontractor is obliged to provide documents and information as identified in this Clause on the same terms as this Clause, • to interview the <i>Supplier's</i> staff, auditors, Subcontractors, staff of Subcontractors and any subcontractors of Subcontractors for any purpose including without limitation the purpose of certifying all information relating to the financial systems used by the <i>Supplier</i> and to verify the accuracy of any accounting statement, charge, computation, assessment of an amount due or payable or claim made pursuant to any of the provisions of this Framework Contract. The <i>Supplier</i> uses its best endeavours to make any such staff and/or Subcontractors identified by the <i>Employer</i>, his agent and/or any auditors available to be interviewed and uses all reasonable endeavours to ensure that they co-operate fully with the <i>Employer</i>, his agent and/or any auditors for that purpose. • to inspect and view the operation, the state and progress of any part or parts of any Work Packages (such right not to be exercised so as to unreasonably delay or impede the progress of

		the Work Packages) and to ascertain whether the Work Packages are being provided in accordance with this Framework Contract and otherwise monitor compliance by the <i>Contractor</i> with its obligations.
104.3		<p>In addition to the other rights under this Clause 104</p> <ul style="list-style-type: none"> the <i>Supplier</i> supplies to the <i>Employer</i> or his agent such information in respect of the Work Packages as is reasonably required by the <i>Employer</i>. Without limitation to the generality thereof the <i>Supplier</i> supplies and makes available for inspection by the <i>Employer</i> or his agent all documentation, including but not limited to, records relating to health and safety including risk assessments, procedures, safe systems of work, method statements, maintenance records, training records, notes of meetings, inspection reports and notes, incident and accident investigations and reports and if the <i>Employer's</i> agent requires substantiation for any rate, cost or charge that the <i>Supplier</i> wishes to make under this Framework Contract, the <i>Supplier</i> provides full information to the satisfaction of the <i>Employer</i> or its auditors including without limitation all documentation and records in order that the number of hours worked and the Plant and Materials used as claimed and/or assessed by the <i>Supplier</i> may be verified, if appropriate before such rate, cost or charge is included in any application for payment or invoice.
104.4		Where any information required under this Clause is confidential or commercially sensitive, the <i>Employer</i> procures that the <i>Employer</i> and any auditor treat the information as Confidential Information in accordance with this Framework Contract provided that the auditors may also pass such information to the <i>Employer</i> and those persons which the auditor being deemed hereby to have equivalent rights to the <i>Employer</i> could pass it in accordance with this Framework Contract.
104.5		The <i>Supplier</i> ensures that its financial records relating to the performance of the Framework Contract conform to all applicable accounting standards and practices and supplies to the <i>Employer</i> or his agent within twelve weeks of the end of the <i>Supplier's</i> financial year at the cost of the <i>Supplier</i> a certificate (dated no earlier than two weeks previous to its supply to the <i>Employer</i> or his agent) signed by its auditors certifying they are satisfied with the <i>Contractor's</i> financial systems in respect of that financial year.
104.6		The <i>Employer</i> , his agent and any auditors have absolute discretion to determine whether to exercise the audit rights in this Clause 104 on a sample basis or in respect of all Work Packages performed under the Framework Contract.
104.7		In respect of a Work Package carried out under the conditions of contract of the NEC3 Engineering and Construction Contract, if as a result of the exercise of the powers under this Clause 104 or otherwise any inaccuracy in any assessment, application for payment, certificate or invoice issued prior thereto is revealed, the <i>Employer</i> or his agent is entitled (without limitation to any other remedies available to the

		<i>Employer</i> his agent and the <i>Project Manager</i>) to assess amounts himself and/or to give notice of intention to withhold payment in accordance with Clause Y2.3 and/or correct any wrongly assessed amount due in accordance with Clause 50.5
Z105	Corrupt Practices	
	Add new Clauses as follows:	
	105.1	<p>The <i>Supplier</i> does not and procures that none of its agents, suppliers or Sub supplier of any tier or the employees of any of them</p> <ul style="list-style-type: none"> • offer or give or agree to give any person in the service of the <i>Employer</i> any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Framework Contract or for showing or forbearing to show favour or disfavour in relation to the Framework Contract or shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1992, • enter into any agreement with the <i>Employer</i> in relation to the Framework Contract in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge, unless before such agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the <i>Employer</i> or • cause any of the matters referred to in this Clause to be done prior to the date of this framework contract.
	105.2	The <i>Supplier</i> maintains a register of any pecuniary benefit, gifts or hospitality accepted in relation to this Framework Contract and permits and co-operates fully with the <i>Employer</i> , the <i>Employer's Agent</i> , the <i>Project Manager</i> and/or any auditors (whether internal or external) to ensure that the <i>Employer</i> , the <i>Employer's Agent</i> the <i>Project Manager</i> and/or any such auditors have access to such register if required.
Z106	Equal Opportunities	
	Add new Clauses as follows:	
	106.1	<p>The <i>Supplier</i> adopts a policy to comply with its statutory obligations under: The Equality Act 2010 Any other equalities legislation introduced during the service period and accordingly does not treat one group of people less favourably than others because of their colour race nationality ethnic origin, sex, sexual orientation, religion or belief, age or any disability or for any other reason specified in any legislation introduced during the <i>service period</i>, in relation to decisions to recruit train or promote or otherwise in relation to the terms and conditions on which it engages its personnel and does not discriminate on such groups in selection of any Subcontractor or other suppliers.</p>
	106.2	In the event of any finding of unlawful discrimination being made against the <i>Supplier</i> by any court or tribunal, or of any adverse finding in any formal investigation by the Equality and Human Rights Commission the

		<i>Supplier</i> takes appropriate steps to prevent repetition of the unlawful discrimination and, on request, provides the <i>Employer</i> with details of any steps taken.
	106.3	The <i>Supplier</i> , on request, provides the <i>Employer</i> with examples of the instructions and other documents, recruitment advertisements and other literature.
	106.4	The <i>Supplier</i> observes as far as possible the Equality and Human Rights Commission's Codes of Practice in employment.
	106.5	The <i>Supplier</i> uses reasonable endeavours to procure that Sub supplier comply with this Clause 106 as if reference to the <i>Supplier</i> were a reference to any Sub supplier.
	106.6	The <i>Supplier</i> implements procedures and systems which would fulfil the Framework Contract Quality Submission and the Work Package Quality Submission in respect of avoidance of discrimination and the support of equal opportunities.
	106.7	The <i>Supplier</i> , on request, provides the <i>Employer</i> with information and access to such documents as the <i>Employer</i> may require to enable it to satisfy itself that the <i>Supplier</i> complies and will continue to comply with all current legislation in respect of equality and diversity.
Z107	Whistle Blowing	
	Add new Clause as follows:	
	107.1	The <i>Supplier</i> confirms that the <i>Employer's</i> Chief Executive, Director of Business Development, Monitoring Officer and Section 151 Officer are authorised as persons to whom the <i>Supplier's</i> staff may make a qualifying disclosure under the Public Interests Disclosure Act 1998 and declares that any of its staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment. The <i>Supplier</i> further declares that any provision in an agreement purporting to preclude a member of its staff from making a protected disclosure is void.
Z108	Contractor not Agent	
	Add new Clauses as follows:	
	108.1	Unless otherwise expressly stated in this Framework Contract, the <i>Supplier</i> is not and in no circumstances holds itself out as being the servant or agent of the <i>Employer</i> .
	108.2	The <i>Supplier</i> is not and in no circumstances holds itself out as being authorised to enter into any contract on behalf of the <i>Employer</i> or in any other way bind the <i>Employer</i> to the performance, variation, release or discharge of any obligations.
	108.3	The <i>Supplier</i> has not and in no circumstances holds itself out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.
Z109	Not used.	
Z110	Publicity	
	Add new Clause as follows:	
	110.1	The <i>Supplier</i> publicises information concerning this Framework Contract only with the <i>Employer's</i> express prior written agreement and observes the <i>Employer's</i> protocol relating to media coverage the purpose of which is to avoid the publication of information which is inaccurate or which is presented in a way which is misleading or damaging to the <i>Employer</i> .

		<p>The <i>Employer</i> wishes to increase public awareness of the services which it provides and will take every opportunity to ensure that its corporate identity is associated with service delivery.</p> <p>If the provision of the Work Packages involves the production and distribution of information, promotional literature, press releases or other material including the publication of material, publication of material for use on web sites, the <i>Supplier</i> submits proofs of any such material to the <i>Employer</i> for approval before publication and the <i>Employer</i> uses all reasonable endeavours to notify the <i>Supplier</i> of its approval or otherwise within the <i>period for reply</i>.</p>
Z111	Amendments	
	Add new Clause as follows:	
	111. 1	No amendment to this Framework Contract is effective unless in writing and executed as a deed by the Parties.
Z112 – Z114	Not used	
Z115	Conflicts of Interest	
	Add new Clause as follows:	
	115. 1	The <i>Supplier</i> ensures that no conflict of interest arises between its performance of the Framework Contract and any other matter in which it may be interested whether directly or indirectly.
Z116	Not used	
Z117	Freedom of Information Act	
	Add new Clause as follows:	
	117. 1	<p>In responding to requests for information in relation to this Framework Contract which are made under the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof, or any related guidelines or codes of practice the <i>Employer</i> is entitled to provide information in relation to this Framework Contract, save for such information which in the <i>Employer's</i> opinion is exempt information as described within any provision of Part II of the Freedom of Information Act 2000, and where it is the public interest to maintain the exemption.</p> <p>The <i>Supplier</i> assists the <i>Employer</i> at no additional charge in meeting any requests for information in relation to this Framework Contract which are made to the <i>Employer</i> in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof, or any related guidelines or codes of practice. The <i>Employer</i> may from time to time serve on the <i>Supplier</i> an information notice requiring the <i>Supplier</i> within such time and in such form as is specified in the information notice, to furnish to the <i>Employer</i> such information as the <i>Employer</i> may reasonably require relating to such requests for information.</p>
Z118	Assignment	
	Add new Clause as follows:	
	118. 1	The <i>Employer</i> is entitled to assign the benefit of and its rights under this Framework Contract at any time without the <i>Supplier's</i> consent subject to the <i>Employer</i> giving prior written notice of such assignment to the <i>Framework Contract</i> . The <i>Supplier</i> is not entitled to assign the benefit of

		and its rights under this Framework Contract without the <i>Employer's</i> prior written consent.
Z119	No Fetter	
	Add new Clause as follows:	
	119. 1	For the avoidance of doubt nothing contained or implied in this Framework Contract prejudices or affects the <i>Employer's</i> rights powers duties and obligations in the exercise of its functions (including without prejudice to the generality of the foregoing functions as Highways Authority, Waste Authority, Planning Authority and as a local authority in connection with environmental health matters) as may be amended supplemented or increased from time to time and the rights powers duties and obligations of the <i>Employer</i> as a local authority and/or pursuant to its other functions and duties may be as fully and effectually exercised or discharged as if the Framework Contract had not been executed.
Z120	Waiver	
	Add new Clause as follows:	
	120. 1	<p>No term or provision of this Framework Contract is waived by any Party unless a waiver is given in writing by the Party and no failure by the <i>Employer</i> or his agent at any time to enforce any provision of this Framework Contract or to require performance by the <i>Supplier</i> of any of the provisions of this Framework Contract is construed as a waiver of any such provision and does not affect the validity of this Framework Contract or any part thereof or the right of the <i>Employer</i> to enforce any provision in accordance with its terms.</p> <p>No waiver under this Clause is a waiver of a past or future default or breach, nor does it amend, delete or add to the terms, conditions or provisions of this Framework Contract unless (and then only to the extent) expressly stated in that waiver.</p>
Z121	Set Off	
	Add new Clause as follows:	
	121. 1	Wherever any sum of money is recoverable from or payable by the <i>Supplier</i> such sum may be deducted from or reduced by the amount of any sum then due or which at any time thereafter may become due to the <i>Supplier</i> whether under this Framework Contract or any other agreement between the <i>Employer</i> and the <i>Supplier</i> .
Z122	Severance	
	Add new Clause as follows:	
	122. 1	<p>If any provision of this Framework Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect that does not affect or impair the legality, validity or enforceability of any other provision of this Framework Contract which continues in full force and effect as if this Framework Contract had been executed with the invalid provision eliminated except where it deprives one of the Parties of a substantial part of the benefit intended to be derived by it from this Framework Contract without providing any corresponding benefit the Parties in good faith amend and, if necessary, execute such further assurances in relation to this Framework Contract to reflect as nearly as</p>

		possible the spirit and intention behind the illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the laws of that jurisdiction and so that the amended clause complies with the laws of the jurisdiction and if the Parties cannot agree upon the terms of any amendment or assurance within six months of the date upon which the provision was determined to be wholly or partly illegal, invalid or unenforceable by any court, tribunal or administrative body then the dispute is determined in accordance with the dispute resolution procedures contained within this Framework Contract.
Z123	Whole Agreement	
	Add new Clause as follows:	
	123.1	The Framework Contract and all documents referred to herein constitute the entire agreement between the Parties with respect to the subject matter covered by them and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the Parties. The <i>Supplier</i> acknowledges that it does not enter into the Framework Contract in reliance on any warranty, representation or undertaking other than those contained in the Framework Contract, and that its only remedies are for breach of contract provided that this shall not exclude any liability which the <i>Employer</i> would otherwise have to the <i>Supplier</i> in respect of statements made fraudulently by or on behalf of the <i>Employer</i> prior to the <i>starting date</i> .
Z124		Not used
Z125	Award of Package Orders	
	125.1	This Framework Contract enables Work Packages to be awarded by the <i>Employer</i>
	125.2	Unless set out to the contrary within a Request for Quotation, when a Work Package is awarded with a contract value exceeding £500,000.00 (Five Hundred Thousand pounds), the Supplier shall enter into a deed of agreement with the Employer in the form set out in Schedule D of Volume 0.
	125.3	Any Work Packages undertaken prior to the signing of an appropriate deed of agreement mentioned in Z125.2 are done so at the <i>Supplier's</i> risk and the <i>Employer</i> makes no guarantee of payment for these Work Packages.
Z126		Not used
Z128	Health and Safety	
	128.1	Without in any way detracting from or affecting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of the Order, the Parties endeavour to establish and maintain in respect of all works and services a culture and working environment in which health and safety is of paramount concern to all parties involved with the works and services and health and safety reasonably takes precedence over all other considerations.
	128.2	To raise health and safety standards in respect of the Work Packages in addition to the specific health and safety requirements of the Package Orders the Supplier:

		<ul style="list-style-type: none"> • complies with any and all approved codes of practice produced or promulgated by the Health and Safety Executive and/or the Health and Safety Commission; • takes all reasonable steps to encourage all personnel engaged by the Supplier and/or any Subcontractor and/or Subconsultant to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme; • ensures that all personnel engaged by the Employer and/or any Subcontractor and/or Subconsultant receive comprehensive site-specific health and safety induction training and regular refresher training; • ensures that all personnel engaged by the Employer and/or any Subcontractor and/or Subconsultant have access, at all times, to competent health and safety and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and • ensures that there is full and proper health and safety consultation with all personnel engaged by the Employer and/or any Subcontractor and/or Subconsultant in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.
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SCHEDULE A

ECC Contract - Contract Data Part One (package orders)

NB: the Employer will complete the Contract Data part one entries below prior to issuing each Package Order

Contract Data part one – data provided by the Employer

The Data which applies to all Package Orders is:

General

- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution option W2, Secondary Options X4, X7, X13 X16, X18Y(UK)2, Z of the NEC3 Engineering and Construction Contract (April 2013)

- The *works are as defined within each Package Order*

- The *Employer is*

Name	Somerset County Council
Address	County Hall The Crescent Taunton Somerset TA1 4DY

Telephone 01823 357010

- The *Project Manager* is **defined within each Package Order**
- The *Supervisor* is **defined within each Package Order**
- The *Adjudicator* is **to be agreed.**
- The Works Information is in: **Framework Contract Volume 2 (Works Information (General)); Framework Contract Volume 3 (Works Specification); and as further specified in each Package Order**
- The Site Information is in **each Package Order**
- The *boundaries of the site* are **defined within each Package Order**
- The *language of this contract* is **English.**
- The *law of the contract* is **the law of England and Wales**
- The *period for reply* is **10 working days (Monday to Friday).**
- The *Adjudicator nominating body* is **the Institution of Civil Engineers**
- The *tribunal* is **arbitration and the arbitration procedure** is the latest edition of the **ICE Arbitration Procedure**

Time

- The *starting date* is **defined within each Package Order**
- The *access dates* are **unless otherwise specified in the Package Order the same as the starting date**
- The *Contractor* submits revised programmes at intervals no longer than **the number of weeks defined in the Package Order**

Testing and Defects

- The *defects date* is **52** weeks after Completion of the whole of the *works* unless otherwise specified in the Package Order
- The *defect correction period* is **12 weeks unless otherwise specified in the Package Order**

Payment

- The *currency of this contract* is the **Great British Pound Sterling (£)**
- The *assessment interval* is **a calendar month unless otherwise specified in the Package Order**
- The *interest rate* is **2 %** per annum above the base rate of the **Bank of England**

Compensation Events

- The place where weather is to be recorded is **the Meteorological Office weather station at Yeovilton unless otherwise specified by the Project Manager.**
- The *weather measurements* to be recorded for each calendar month are
 - The cumulative rainfall (mm)
 - The number of days with rainfall more than 5mm
 - The number of days with minimum air temperature less than 0 degrees Celsius
 - The number of days with snow lying at 12 hours GMT
- The *weather measurements are supplied by* the **entity chosen from time to time by the Project Manager**
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at **Yeovilton** and which are available from the **Meteorological Office**
- Where no recorded data are available, the *Project Manager* will provide assumed values for the ten year return weather data for each weather measurement for each calendar month.

Risk and Insurance

- The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity with this contract for any one event is **£10 million with indemnities to principals clause. The maximum deductible is £100,000.**
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is **£10 million with indemnities to principals clause. The maximum deductible is £100,000.**

Optional statements

If the tribunal is arbitration

- The *arbitration procedure* is the Institution of Civil Engineer's most recently published arbitration procedure

- The place where arbitration is to be held is **London**
- The person or organisation who will choose an arbitrator
 - If the Parties cannot agree a choice or
 - If the *arbitration procedure* does not state who selects an arbitrator is the **President of the Institution of Civil Engineers**
- The *completion date* is **defined within each Package Order**
- The *Contractor* is to submit a first programme for acceptance within **the period specified within the Package Order**

If Option X7 is used

- Delay damages for Completion of the whole of the *works* are: The level of such damages will be based on the total of the Contractor's tendered Prices and calculated at a daily rate using the following formula: total of tendered Prices x 15%/365 days = £..... per day.

If Option X13 is used

- The amount of the performance bond is:

If Option X16 is used

- The *retention free amount* is: nil
- The *retention percentage* is: 10%

If Option X18 is used

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to: 75%
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to: unlimited
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to: nil.
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to: 150% of the tendered total of the Prices.
- The *end of liability date* is 12 years after the Completion of the whole of the *works*.

If Option Z is used:

- The *additional conditions of contract* are: the Z clauses which immediately follow this Contract Data part one.

ECC Contract - Option Z: additional conditions of contract

The following provisions supplement, modify or replace the published provisions of the NEC3 Engineering and Construction Contract (April 2013)

Z2 Identified and Defined Terms	
11.1	<p>Add the following after the first sentence:</p> <p>“Capitalised terms used in this contract but not defined in clause 11.2 shall be as defined in the Framework Contract.”</p>
	Delete second bullet clause 11.2 (2) and replace with:
11.2 (2)	corrected all Defects the <i>Supervisor</i> states he is to correct, save for any defects the <i>Supervisor</i> agrees, at his sole discretion, can be remedied after completion and
	Delete Clause 11.2 (5) and replace with:
11.2	<p>(5) A Defect is</p> <ul style="list-style-type: none"> • a part of the <i>works</i> which is not in accordance with the Works Information and/or this contract and/or does not comply with any legal requirements or the law, or • defective <i>Contractor's</i> design or design for which the <i>Contractor</i> is responsible under the Works Information or contract, or • a part of the <i>works</i> which is defective due to the <i>Contractor's</i> defective workmanship or its use of materials in the <i>works</i> which are defective or unsuitable for the use they are put to in the <i>works</i>, or • a defect arising due to the <i>Contractor's</i> inadequate preparation of the site on which the <i>works</i> are to be constructed.
	Clause 11.2 (13) insert after “to do”:
11.2 (13)	In an efficient manner
	Add new Clauses as follows:
11.2 (32)	CDM Regulations are the Construction (Design and Management) Regulations 2015, as amended from time to time.
11.2 (33)	Confidential Information means any of the terms of this contract or any confidential or proprietary information (including, documents, computer records, specifications, formulae, evaluations, methods, processes, technical descriptions, reports, and other data, records, drawings and information) provided to or arising or acquired by it pursuant to the terms or performance of this contract (including without limitation any such documents or information supplied in the course of proceedings under Clause Z46 (W2) (Dispute Resolution)) and any information documents data or other material disclosed or made available by the <i>Employer</i> prior to the <i>starting date</i> .
11.2 (34)	<p>Contract Year means a period of twelve months commencing on 1st April, with the exception of</p> <ul style="list-style-type: none"> • the first Contract Year, which commences on the <i>starting date</i> and ends on the 31st March first occurring thereafter and • the last Contract Year, which commences on 1st April and ends at the end of the <i>service period</i> (whether by expiry or

		termination).
	11.2 (35)	Contractor Default Reason for Terminating means any of the reasons identified as R1 – R10 (where the <i>Contractor</i> is the other Party), R11-R15, R18 and R22 in core clause 91 (Reasons for termination).
	11.2 (36)	Direct Losses means all damage, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law.

	11.2 (37)	Framework Contract means the framework contract entered into by the Employer and the Contractor dated [DATE] under the terms of which the Employer issued a Package Order to the Contractor for the Work Package to be carried out by the Contractor under this contract.
	11.2 (38)	Framework Contract Quality Submission means the Contractor's response to Schedule 8 of Volume 5 of the Invitation to Tender for the Framework Contract
	11.2 (39)	Good Industry Practice means at any time the exercise of that degree of skill, care, diligence, prudence and foresight and the use of methods, acts, techniques, standards and workmanship which are in accordance with applicable and generally accepted good practice and which would reasonably and ordinarily be expected at such time from a skilled and experienced contractor complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as the <i>service</i> .
	11.2 (40)	Intellectual Property means all intellectual property rights including without limitation all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, any patents or patent applications, registered and unregistered designs, registered and unregistered design rights, utility marks, copyrights (including rights in computer software and database and topography rights), moral rights, unauthorised extraction and/or re-utilisation rights, trade names, discoveries, inventions, confidential information, know-how or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
	11.2 (42)	Material Breach Warning Notice means a notice served pursuant to Clause 102.6.
	11.2 (43)	Method of Measurement means the method of measurement in Volume 4 of the Framework Contract.
	11.2 (44)	New Roads and Street Works Act means the New Roads and Street Works Act 1991 and any guidance and/or codes of practice issued by any relevant government or other body in relation to this Act.
	11.2 (45)	Operations means as defined in Clause 25.5
	11.2 (46)	Order of Priority means the order of priority in clause [5] of the Deed of Agreement pursuant to which the Employer and the Contractor entered into this contract.

11.2 (47)	Overall Performance is the score calculated by the Performance Dashboard that represents the <i>Contractor's</i> performance against Key Contractor Performance Indicators.
11.2 (48)	Performance Dashboard is the set of targets and actual performance for each Key Contractor Performance Indicator as set out in the order in the form of Key Contractor Performance Indicators
11.2 (49)	Persistent Breach Warning Notice means a notice served pursuant to Clause 102.3.
11.2 (50)	Quality Management System means the organisational structure, procedures, processes and resources for determining and implementing quality policy to be operated by the <i>Contractor</i> in accordance with this contract.
11.2 (52)	Relevant Approval means an approval which is required pursuant to this contract or pursuant to any Law or Legal Requirement for the carrying out of any part of the <i>service</i> (including for the avoidance of doubt the requirements of any relevant planning, building regulations or other consent, licence, approval or authority of which the <i>Contractor</i> is or should be aware).
11.2 (53)	Remedial Notice means a notice served pursuant to Clause 102.2.
11.2 (54)	Remedial Period means the period within which the <i>Contractor</i> remedies a breach of its obligations under this contract referred to in a Remedial Notice and determined in accordance with Clause 102.
11.2 (55)	Special Requirements means the special requirements in relation to the <i>Employer</i> as Local Highway Authority and as waste disposal authority and in relation to any statutory undertaker or body as detailed within the Works Information.

11.2 (56)	Street Authority means for the purposes of this contract, the <i>Employer's</i> role as highway authority responsible for streets maintained at public expense. The Street Authority's roles and responsibilities are as defined within the New Roads and Street Works Act 1991 and the current Codes of Practice as its various parts are implemented by legislation.
11.2 (58)	Warning Notice means a Persistent Breach Warning Notice or a Material Breach Warning Notice issued pursuant to this contract.
11.2 (59)	Working Day means any day, excluding Saturday, Sunday and public holidays.
11.2 (60)	Work Package Quality Submission means the information submitted by the Contractor in response to the Employer's request to suppliers to provide quotations for this contract.
11.2 (61)	Request for Quotation means the process set out within Schedule C for requesting quotes from suppliers under the Framework Contract which then form the basis of the Package Order. For the avoidance of doubt, references in the NEC3 Framework Contract to 'the <i>quotation procedure</i> ' shall be read and construed as references to the Request for Quotation process in Schedule C.
11.2 (62)	Design Data means all calculations, designs, design or construction information, standards, specifications, plans, drawings, graphs, sketches, models, reports, data and any other documents or materials in any medium including all eye readable or computer or other

		machine readable data, used, prepared or to be prepared by or on behalf of the <i>Contractor</i> (and/or any of the <i>Contractor's</i> agents, employees, contractors or Subcontractors of any tier) in connection with the <i>service</i> .
	11.2 (63)	The Accepted Plan is the Accepted Programme.
Z3	Interpretation and the Law	
	Add new Clauses as follows:	
	12.1A	<p>The following additional conditions of contract under Option Z of the Framework Contract shall be incorporated into this contract and shall be deemed to apply to this contract:</p> <p>Z1B Supplier Due Diligence Z1D Supplier warranties and representations Z2 Confidentiality Z3 Data Protection Z8 Subcontracting and people Z104 Audit and Compliance Z105 Corrupt Practices Z106 Equal Opportunities Z107 Whistle Blowing Z115 Conflicts of Interest Z117 Freedom of Information Act Z119 No Fetter Z120 Waiver Z121 Set Off Z122 Severance Z128 Health and Safety</p> <p>References in the above clauses to “the framework contract” shall be read and construed in this contract as references to this contract.</p> <p>References in the above clauses to “the Supplier” shall be read and construed in this contract as references to the Contractor.</p> <p>References in above clauses to “the Tender” shall be read and construed in this contract as references to the Framework Contract Quality Submission and the Work Package Quality Submission.</p> <p>If the case of any conflict between the Framework Contract clauses listed above and the other clauses of this contract, the other clauses shall prevail.</p>
	12.5	Any requirement for anything or action to be “in accordance with”, “or equivalent” or “in compliance with” any standard, code, specification or other requirement or stipulation means that such thing or action exceeds or at least equals that standard, code, specification or other requirement or stipulation. Where a product name is stated within the <i>Activity Schedule</i> it has the same meaning as if the product name had been stated with the additional wording ‘or equivalent’.
	12.6	Headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this contract.

12.7	All references to any statute or statutory provision (including any subordinate legislation) include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute.
12.8	Person includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or association.
12.9	Any reference to a public organisation or representative includes a reference to any successor to such public organisation or representative or any organisation or entity or representative which takes over the functions or responsibilities of such public organisation or representative.
12.10	<p>Wherever pursuant to this contract the <i>Employer</i> is obliged to pay any amount to the <i>Contractor</i> in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the <i>Contractor</i> such obligation applies only to so much of such sums in the nature of costs, expenses, fees or charges as have been properly incurred on an arm's length commercial basis or, where not incurred on an arm's length commercial basis (including where the payment is made to the <i>Contractor</i> or an Associated Company of the <i>Contractor</i>), so much of them as are proper and reasonable;</p> <p>and the <i>Contractor</i>, where requested by the <i>Project Manager</i>, provides supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums.</p>
12.11	Any reference to the statutory duties or functions of the <i>Employer</i> is a reference to such duties or functions (including powers and discretions) from time to time and includes any common law duties and functions (including powers and discretions).
<u>12.12</u>	<p>Notwithstanding anything stated elsewhere in this Contract, if there is any ambiguity or inconsistency in or between the documents comprising this Contract, the priority of the documents is in accordance with the following sequence:</p> <ul style="list-style-type: none"> • the Contract Data part one • the Contract Data part two • the clauses under Option Z of the <i>conditions of contract</i> • the <i>conditions of contract</i> excluding the clauses under Option Z • the Works Information • the Site Information • the Accepted Programme • the Activity Schedule • the Work Package Quality Submission • the Framework Contract Quality Submission

Z4 Communications		
	Delete Clause 13.8 and replace as follows:	
	13.8	The <i>Project Manager</i> may withhold acceptance of a submission by the <i>Contractor</i> on any ground. Withholding acceptance on reasonable grounds, at the <i>Project Manager's</i> absolute discretion (where expressly so provided in this contract) or for any other reason stated in this contract is not a compensation event.
	Add new Clauses as follows:	
	13.9	The <i>Contractor</i> submits to the <i>Project Manager</i> the reports required by (and in such numbers and format as may be required pursuant to) the Works Information. If the <i>Project Manager</i> considers that any report has not been compiled in accordance with this contract or is based on erroneous information or data, the <i>Project Manager</i> serves a notice of objection within four weeks of receipt of the report. If such objection is not resolved by agreement between the Parties within two weeks of the date of the <i>Project Manager's</i> notice, either Party may refer the dispute for resolution pursuant to Clause W2. The <i>Contractor</i> issues a revised report as soon as practicable after resolution (whether by agreement or determination pursuant to Clause W2) of an objection notified by the <i>Project Manager</i> .
	13.10	The <i>Contractor</i> retains at his own cost copies of all Design Data, reports and other documents which record the Operations for the period stated in the Works Information. Records are maintained and updated in the form and manner required by the Works Information or as otherwise instructed by the <i>Project Manager</i> .
	13.11	The <i>Contractor</i> Provides the Works in a manner that enables efficient and effective communication between the <i>Contractor's</i> staff and the <i>Employer's</i> staff and ensures that the key persons named in Contract Data Part 2 and those detailed within the Works Information, attend such meetings as the <i>Employer</i> or the <i>Project Manager</i> may require from time to time on 12 hours' notice (or shorter where necessary) whether at the <i>Employer's</i> offices or as otherwise agreed with the <i>Employer</i> or <i>Project Manager</i> . The cost of attending such meetings is deemed to be included in the Prices.
	13.12	The <i>Contractor</i> operates information and electronic communication systems in compliance with the Works Information. The cost of meeting such requirements is deemed to be included in the Prices.
Z5-Z7		Not used
Z8		Not used
Z9		Not used
Z10 Providing the Works		
	Delete Clause 20.1 and replace as follows:	
	20.1	<p>The <i>Contractor</i> Provides the Works:</p> <ul style="list-style-type: none"> • in accordance with the Works Information, the Framework Contract and, subject to the Order of Priority, the Work Package Quality Submission, and the Framework Contract Quality Submission; • in an efficient, economic, effective and safe manner and in accordance with Good Industry Practice; • in accordance with all applicable legislation including any legislation detailed within this contract;

		<ul style="list-style-type: none"> • in accordance with any Accepted Plan and in a timely manner so as to avoid any unnecessary delay in the completion of the <i>works</i>; • in accordance with the Quality Management System; and • to the reasonable satisfaction of the <i>Project Manager</i>.
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	Add new Clause as follows:	
	20.2	The <i>Contractor</i> operates a Quality Management System for providing the <i>works</i> . The Quality Management System complies with the requirements stated in the Works Information. The <i>Contractor's</i> quality policy statement and a comprehensive quality plan are submitted to the <i>Project Manager</i> for his approval, prior to the <i>starting date</i> .
Z11	The Contractor's design	
	Delete clauses 21.1, 21.2, and 21.3 and replace with the following	
	21.1	<p>The <i>Contractor</i>:</p> <ul style="list-style-type: none"> • designs the parts of the <i>works</i> which the Works Information states he is to design, • makes the necessary arrangements and is responsible for obtaining all Relevant Approvals required to Provide the Works at his own cost (save where otherwise stated in this contract), • recognises the <i>Employer's</i> statutory duties including under the New Roads and Street Works Act and Provides the Works in a manner that enables the <i>Employer</i> to fulfil such duties. The <i>Contractor</i> serves the Street Authority with all notifications required by the <i>Project Manager</i>, • liaises with the Street Authority regarding the application and processing of road closure notices, including but not limited to, informing the Street Authority and Others regarding any changes to programmes of work which may result in a change being made to the original road closure notice, • recognises that the <i>works</i> undertaken encompass many of the <i>Employer's</i> statutory duties and customer care objectives, and undertakes to give the <i>works</i> the highest priority, • ensures that no unnecessary interference with or obstruction to the convenience of the public or access to or use of public or private roads and footpaths access ways or other routes occurs, • complies with the Special Requirements, • complies with the partnering information stated in the Works Information,
	21.2	<p>The <i>Contractor</i> submits the particulars of his design as the Works Information requires to the <i>Project Manager</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that:</p> <ul style="list-style-type: none"> • it does not comply with the Works Information or the other requirements of this contract, or it does not comply with the applicable law.

		The <i>Contractor</i> does not proceed with the relevant work for which such design is required until the <i>Project Manager</i> has accepted his design.
	21.3	The <i>Contractor</i> may submit his design for acceptance in parts if the design of each part can be assessed fully.
Z12	People	
	Delete Clause 24.2 and replace as follows:	
	24.2	The <i>Project Manager</i> may, having stated his reasons and without requiring the <i>Contractor</i> to provide acceptance of those reasons, instruct the <i>Contractor</i> to remove an employee. The <i>Contractor</i> then arranges that, after one day, the employee has no further connection with the work included in this Contract.
	Add new Clauses as follows:	
	24.3	Any decision of the <i>Project Manager</i> as to whether any person is not to become involved in or is to be removed from involvement in the performance of the Contract is final and conclusive.
	24.4	Neither the <i>Employer</i> , nor the <i>Project Manager</i> , nor its or their employees, servants or agents has any liability in respect of any claim costs loss action or damage made or any award of compensation in respect of redundancy or unfair or wrongful dismissal to any employee of the <i>Contractor</i> or any Subcontractor, or other person engaged by the <i>Contractor</i> arising from the operation of this contract and the <i>Contractor</i> indemnifies the <i>Employer</i> , the <i>Project Manager</i> and such employees servants or agents jointly and severally against any such loss costs claims actions or damages.
	24.5	The <i>Contractor</i> provides to the <i>Project Manager</i> such information and documentation as the <i>Project Manager</i> reasonably requires from time to time to satisfy him that all persons to be engaged by the <i>Contractor</i> to Provide the Works or any part thereof are competent to Provide those Works or such part and have suitable qualifications and the appropriate level of experience and training and have appropriate certification from an appropriate professional body.
	24.6	From time to time the <i>Project Manager</i> may require the <i>Contractor</i> to give to him a list of names and addresses of all persons who are or may be at any time concerned with the contract. The <i>Contractor</i> provides such written information within two Working Days of such a request to the <i>Project Manager</i> specifying the capacities in which they are concerned, and giving such other particulars and evidence of identity and other supporting evidence as the <i>Project Manager</i> reasonably requires.
	24.7	If the <i>Project Manager</i> considers that the <i>Contractor</i> is at any time providing insufficient or inappropriately qualified or experienced staff, the <i>Contractor</i> complies at its own cost with any reasonable instructions from the <i>Project Manager</i> regarding the matter.
	24.8	During the period of the contract neither Party solicits or endeavours to entice away from or discourage from being employed by the other any individual who is for the time being an officer or employee of the other (whether or not such individual would commit a breach of contract by reason of leaving that employment).
	24.9	The <i>Contractor</i> has provided to the <i>Employer</i> within the Framework Contract Quality Submission and/or Work Package Quality

		Submission details of its strategy, policies, practices and procedures for retaining and recruiting appropriately qualified and experienced staff. Without prejudice to its other obligations the <i>Contractor</i> maintains (and where appropriate augments) and implements practices, policies, procedures and strategies which are at least equivalent in terms of capacity to achieve their aims of recruitment and maintaining an appropriately qualified, experienced and sufficient staff resource to Provide the Works in accordance with this contract.
Z13	Working with the Employer and Others	
	Add new Clauses as follows:	
	25.4	Where necessary in order to Provide the Works, the <i>Contractor</i> holds or attends meetings with Others. The <i>Contractor</i> informs the <i>Project Manager</i> of such meetings in sufficient time to enable the <i>Project Manager</i> to attend such meetings if the <i>Project Manager</i> so wishes.
	25.5	The <i>Contractor</i> co-operates with any other contractors, and/or suppliers engaged in connection with any services or <i>works</i> relating to the Framework Contract (the “Operations”) or any part thereof and assists the <i>Employer</i> in ensuring that the <i>works</i> and their respective inputs into the Operations are properly co-ordinated with the intention of ensuring that the Operations are carried out as quickly, efficiently and economically and with as few disputes as possible and uses its best endeavours acting in good faith to agree such arrangements (and agree variations to such arrangements) as may be required from time to time with such persons as to ensure that no interference, obstruction, hindrance or delay is caused to the <i>service</i> or the Operations but where such interference, obstruction, hindrance or delay is unavoidable that such interference, obstructions, hindrance or delay to the Operations is kept to a minimum.
Z14	Sub-Contracting	
	26.2	Clause 26.2 is amended so that the words “Subject to clauses 26.4 to 26.7 below,” are added at the start of the clause.
	The following new clauses are added after clause 26.3.	
	26.4	Notwithstanding the previous clauses, the <i>Contractor</i> does not subcontract work under this contract without the written consent of the <i>Project Manager</i> where the aggregate value of the proposed subcontract (excluding subcontracts in respect of Plant and Materials or Equipment) together with any other such subcontracts previously or concurrently let in respect of this contract would cause the aggregate value of such subcontracts let to exceed 30% of the value of the contract in question. For the avoidance of doubt, the Project Manager is entitled to reject the Contractor’s request for acceptance without giving a reason.
	26.6	The <i>Contractor</i> does not subcontract any part of the <i>works</i> if the <i>Project Manager</i> is not reasonably satisfied that the subcontract has been procured in circumstances and on terms which are designed to achieve value for money to the <i>Employer</i> and quality of service.
	26.7	The <i>Contractor</i> does not subcontract if the subcontracting would not of itself, or in the context of other subcontracting already approved, be in accordance with and fulfil the Framework Contract Quality

		Submission and the Work Package Quality Submission to the reasonable satisfaction of the <i>Project Manager</i> .
Z15	Other Responsibilities	
	Add new clause as follows:	
	27.5	<p>The <i>Contractor</i> is the Principal Contractor as defined by and for the purposes of the CDM Regulations and the Principal Designer (where stated in the Works Information and/or Contract Data) and, as applicable, performs the requirements imposed on such parties under the CDM Regulations. Without prejudice to the generality of the foregoing and clause 27.4 the <i>Contractor</i> ensures that:</p> <ul style="list-style-type: none"> • he is fully aware of his obligations under CDM Regulations (in particular where he is responsible for any design the provisions of Regulations 11 and 18) and possesses the requisite degree of competence and level of resources to meet those obligations; • all Subcontractors are fully aware of their obligations under the CDM Regulations (in particular where they are responsible for any design the provisions of Regulations 11 and 18) and are fully competent and are adequately resourced to meet those obligations; and • (where he is not the Principal Designer) he at all times co-operates and assists the Principal Designer in the exercise of his duties under the CDM Regulations and supplies all information relevant to the <i>works</i> reasonably required in connection with it."
Z16	Not used	
Z17	Nuisance and Trespass	
	Add new Clause as follows:	
	29.1	The <i>Contractor</i> at all times prevents any nuisance (including, but without limitation, any noisy working operations) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the <i>works</i> and assists the <i>Employer</i> in defending any action or proceeding which may be instituted in relation thereto provided that the <i>Contractor</i> is not liable where the nuisance or other interference was an inevitable consequence of the carrying out of the <i>works</i> .
	29.2	The <i>Contractor</i> at all times ensures that there is no trespass by the <i>Contractor</i> , its servants, agents, sub-contractors or suppliers on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the <i>works</i> and the <i>Contractor</i> takes all reasonable safety and other measures to prevent damage or injury to any persons (including, but without limitation, the occupiers or adjoining or neighbouring property and members of the public).
Z18	Access to and use of the Site	
	Add new Clauses as follows:	
	33.2	The <i>Contractor</i> is deemed to have satisfied itself as to the various routes and means of access and conditions at the Site and has satisfied itself that it is able to access all parts of the Site that it

		requires in order to Provide the Works in accordance with this contract.
	33.3	Where the <i>Contractor</i> requires access to any area of land not included within the Site which is owned by or in the control of Others the <i>Contractor</i> notifies the <i>Project Manager</i> and the <i>Project Manager</i> seeks the Relevant Approvals required for the <i>Contractor</i> . The <i>Project Manager</i> may issue instructions to the <i>Contractor</i> in relation to the <i>Contractor's</i> access to and use of such land and the <i>Contractor</i> complies with the <i>Project Manager's</i> instructions at all times. The <i>Contractor</i> indemnifies the <i>Employer</i> in relation to any claims against the <i>Employer</i> as a result of the <i>Contractor's</i> failure to follow any instruction issued by the <i>Project Manager</i> pursuant to this Clause or any negligent act or omission of the <i>Contractor</i> .
Z19		Not used
Z20	Tests and Inspections	
	Delete Clauses 40.1 - 40.6 and replace as follows:	
	40.1	The <i>Project Manager</i> may carry out or instruct the <i>Contractor</i> to carry out any test or inspection whether required by the Works Information, the applicable law or the <i>Project Manager</i> (including without limitation testing or inspections over and above those stated within this contract that the <i>Project Manager</i> requires from time to time)
	40.2	The <i>Contractor</i> co-operates with the <i>Project Manager</i> in the inspection, monitoring and testing of the Operations or part thereof as required by the <i>Project Manager</i> .
	40.3	The <i>Contractor</i> provides all materials, facilities, samples, assistance, instruments, machines and labour for the tests and inspections referred to in Clause 40.1 to be carried out (whether by the <i>Contractor</i> or the <i>Project Manager</i>) except to the extent that the Works Information expressly states that the <i>Employer</i> is to make such provision.
	40.4	The <i>Contractor</i> notifies the <i>Project Manager</i> of each of his tests and inspections before it starts and afterwards notifies the <i>Project Manager</i> of its results. The <i>Contractor</i> notifies the <i>Project Manager</i> in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The <i>Project Manager</i> may watch any test done by the <i>Contractor</i> .
	40.5	The cost of any test or inspection referred to in Clause 40.1 (where such test or inspection is carried out by the <i>Contractor</i>) is borne by the <i>Contractor</i> , save for any test or inspection which is not required by the Works Information or by the applicable law or because the test or inspection was required to be repeated and which does not reveal a Defect.
	40.6	If any test or inspection shows that any work has a Defect, the <i>Contractor</i> corrects the Defect in accordance with Clause 43.1 and the test or inspection is repeated. If the <i>Contractor</i> fails to repeat the test or inspection, the <i>Employer</i> is entitled to employ and pay other persons to do so and to recover the cost from the <i>Contractor</i> as a debt.
	40.7	The <i>Project Manager</i> assesses the cost incurred by the <i>Employer</i> in repeating a test or inspection after a Defect is found. The <i>Contractor</i> pays the amount assessed.

Z21	Correcting Defects	
	Delete Clauses 43.1 and 43.2 and replace as follows:	
	43.1	The <i>Contractor</i> corrects Defects whether or not the <i>Project Manager</i> or the <i>Supervisor</i> notifies him of them. The <i>Contractor</i> corrects Defects as soon as reasonably practicable and in any event before the end of its <i>defect correction period</i> . Subject to Clause 42.2, this period begins when the Defect is notified or first found by the <i>Contractor</i> whichever is the earlier. In accordance with clause 45, if the <i>Contractor</i> does not correct a Defect within the <i>defect correction period</i> , the <i>Project Manager</i> assesses the cost to the <i>Employer</i> of having the Defect corrected by other people and the <i>Contractor</i> pays this amount.
	43.2	The <i>Project Manager</i> arranges for the <i>Employer</i> to allow the <i>Contractor</i> access to and use of any part of the Site if it is needed for correcting a Defect subject to the <i>Contractor</i> obtaining Relevant Approvals. Where access to and use of the relevant part of the site has been delayed the <i>defect correction period</i> begins when the necessary access and use have been provided.
Z22-Z23		Not used
Z24	Assessing the Amount Due	
	Delete Clause 50.5 and replace as follows:	
	50.5	<p>The <i>Project Manager</i> is entitled to reject any application for payment and to make his own assessment of the amount due if;</p> <ul style="list-style-type: none"> • the amount due is incorrectly assessed, or; • the application for payment is not supported by appropriate receipts and documentation or; • the <i>Contractor</i> fails to provide copies of or access to documents and records required under Clause 104, unless the <i>Project Manager</i> is satisfied that the absence of such supporting evidence is beyond the reasonable control of the <i>Contractor</i>, that any default in compliance with any agreed processes or procedures for monitoring and recording time spent, quantities utilised or expenses incurred was unintentional and that there is suitable alternative and verifiable evidence to support the application. <p>The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed.</p>
Z25	Payment	
	Delete Clause 51.1 and replace as follows:	
	51.1	<p>The <i>Project Manager</i> certifies a payment within 21 days of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the <i>Contractor</i> to the <i>Employer</i> if the change reduces the amount due. Other payments are made by the <i>Employer</i> to the <i>Contractor</i>. Payments are in the <i>currency of this contract</i> unless otherwise stated in this contract.</p> <p>The issue of the <i>Project Manager's</i> certificate does not constitute acceptance that the amount due has been correctly assessed and for the avoidance of doubt</p>

		<ul style="list-style-type: none"> • if the amount due has not been correctly assessed the <i>Project Manager</i> is entitled to issue a notice of intention to withhold payment in accordance with Clause Y2.3 and • if the amount due has been wrongly assessed the <i>Project Manager</i> is entitled to correct a wrongly assessed amount due in accordance with Clause 50.5.
	Add new Clause as follows:	
	51.5	The <i>Contractor</i> submits an invoice to the <i>Employer</i> for the amount due as certified by the <i>Project Manager</i> pursuant to Clause 51.1 within one week of the date of the <i>Project Manager's</i> certificate
	Delete Clause 51.2 and replace as follows	
		Each certified payment is made within fourteen days of receipt of the <i>Contractors</i> invoice or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the <i>Project Manager</i> does not issue a certificate which he should issue, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
Z26-Z32		Not used
Z33	Compensation Events	
	Delete Clause 60.1 (1) and replace with:	
	60.1	<p>(1) The <i>Project Manager</i> gives an instruction changing the Works Information except</p> <ul style="list-style-type: none"> • a change made in order to accept a Defect • a change to the Works Information provided by the <i>Contractor</i> for his design which is made either at his request or to comply with other Works Information provided by the <i>Employer</i> or with the contract • a change made pursuant to Clause 18.1 where the matter giving rise to the change is a matter which was foreseen by the <i>Contractor</i> or ought to have been foreseen by a <i>Contractor</i> experienced in providing works of a similar nature and value to the <i>works</i> detailed within this contract
	Delete Clause 60.1 (9) and replace with:	
	60.1	(9) The <i>Project Manager</i> withholds an acceptance for a reason not stated in his contract (other than: (i) acceptance of a quotation for acceleration or not correcting a Defect for a reason not stated in this contract; (ii) on reasonable grounds; or (iii) at the <i>Project Manager's</i> absolute discretion (where expressly so provided in this contract)).
Z34	Quotations for Compensation Events	
	Delete Clause 62.6 and replace with the following:	
	62.6	If the <i>Project Manager</i> does not reply to a quotation within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> to this effect. If the <i>Contractor</i> submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. For the avoidance of doubt, a failure by the <i>Project Manager</i> to reply to the notification will in no

		circumstances be treated as acceptance of the quotation by the Project Manager.
Z35		Not used
Z37-Z40		Not used
Z41	Intellectual Property	
	Add new Clauses as follows:	
	74.1	The <i>Contractor</i> makes available all Design Data to the <i>Employer</i> without charge in paper based or machine-readable form as required by the <i>Employer</i> . The Contractor supplies copies of the Design Data to the <i>Project Manager</i> and to the Employer's other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.
	74.2	The Contractor hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence to use and reproduce the Design Data for any and all purposes connected with the Affected Property. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence provided always that the Contractor shall not be liable to any licensee for any use of the Design Data or the Intellectual Property Rights in the Design Data for purposes other than those for which the same were originally prepared by or on behalf of the Contractor.
	74.3	The <i>Contractor</i> does not grant to any third party the right to use any of the Design Data save as required to enable it to fulfil its obligations under this contract.
	74.4	The <i>Contractor</i> warrants that the Design Data (except to the extent that Subcontractors have been used to prepare the same) are the <i>Contractor's</i> own original work and that in any event their use in connection with the <i>service</i> will not infringe the rights of any third party. The <i>Contractor</i> further warrants that where Subcontractors are used their work will be original and that the <i>Contractor</i> will obtain the necessary consents in relation to Clause 74.2. The <i>Contractor</i> indemnifies the <i>Employer</i> against all losses, liabilities, demands, claims, proceedings, damages, costs and expenses of whatever kind incurred by the <i>Employer</i> or to which the <i>Employer</i> (directly or indirectly) may be put by reason of the <i>Contractor</i> or any of its employees, agents or Subcontractors infringing or being held to have infringed any Intellectual Property Rights in the course of or in connection with this contract.
	74.5	To the extent that any Design Data is generated by or maintained on a computer or in any other machine readable format, the <i>Contractor</i> (except in relation to standard "off the shelf" computer operating systems) procures for the benefit of the <i>Employer</i> at no charge the grant of a licence or sub-licence for and supply of any relevant software or database on equivalent terms to the equivalent licence or sub-licence granted to the <i>Contractor</i> to enable the <i>Employer</i> and its staff and/or the <i>Project Manager</i> to access and otherwise use such Design Data for the purposes set out in this contract or following its termination for the purposes set out in Clause 74.2.

	74.6	Within 28 days after the Contract Date the <i>Contractor</i> submits to the <i>Project Manager</i> its proposals for backing-up and storage in safe custody of its Design Data and the <i>Project Manager</i> is only entitled to object and require alterations or additions if the proposals do not accord with Good Industry Practice. The <i>Contractor</i> complies with and procures that any Subcontractors comply with the procedures to which no objection has been raised by the <i>Project Manager</i> .
	74.7	After the termination or conclusion of the Contractor's employment hereunder, the Contractor supplies the <i>Project Manager</i> with copies and/or computer discs of such of the Design Data as the <i>Project Manager</i> may from time to time request and the Employer pays the Contractor's reasonable costs for producing such copies or discs.
Z41		Not used
Z42	Indemnity	
	Add new Clauses as follows:	
	83.3	Clause 83.1 is subject to any express obligation of a Party to indemnify the other stated elsewhere in this contract.
	83.4	The <i>Employer's</i> liability to the <i>Contractor</i> under this contract whether in contract, tort (including negligence), breach of statutory duty or otherwise is limited to any loss, damage cost or expense arising from or in connection with <ul style="list-style-type: none"> • any failure by the <i>Employer</i> to make proper payment to the <i>Contractor</i> in accordance with this contract and • any negligent act or omission of the <i>Employer</i> or any of its agents or employees giving rise to death or personal injury.
Z43	Insurance Cover	
	Add new Clauses as follows:	
	84.3	The <i>Contractor</i> provides whatever assistance the <i>Employer</i> reasonably requires for the purpose of handling third party claims. For the avoidance of doubt this includes the provision of all written records which may reasonably be required and the attendance at court of the <i>Contractor's</i> staff as witnesses.
	84.4	The <i>Contractor</i> procures and maintains such other insurances required by applicable law including but not limited to motor insurances.
Z44	Insurance Policies	
	Add new Clauses as follows:	
	85.5	Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured (and where the policy provides an indemnity to principals such reference to "insured" is to include the <i>Employer</i>) except where there is fraud.
	85.6	Each Party complies with the terms and conditions of their insurance policies. Each Party notifies the other of any terms and conditions of the insurance policies which require compliance from the other Party and the other Party will thereafter comply with such terms and conditions.
Z45	Termination	
	Add new Clauses as follows:	
	90.6	The <i>Contractor</i> notifies the <i>Project Manager</i> of the occurrence and details of any event or circumstance which could or would, with the

		passage of time or otherwise, constitute or give rise to a reason for terminating identified in Clause 90.2 promptly upon the <i>Contractor</i> becoming aware of the occurrence thereof.
	Amend Clause 91.2 so that the first bullet (R11) reads as follows:	
	91.2	Substantially failed to comply with his obligations (R11) which includes, but is not limited to, circumstances where the <i>Employer</i> has issued a Persistent Breach Warning Notice or a Material Breach Warning Notice, the <i>Contractor</i> fails to remedy a breach following receipt of a Remedial Notice and/or the <i>Contractor</i> repeats a breach more than once within a Contract Year.
	Procedures on Termination	
	Amend Clause 92.2 as follows:	
	Delete the first sentence and replace with:	
	92.2	The procedure on termination, or partial suspension under Clause 95, also includes one or more of the following as set out in the Termination Table.
	Add new Clause as follows:	
	92.3	On the termination of this contract for any reason: <ul style="list-style-type: none"> the <i>Contractor</i> co-operates fully with the <i>Project Manager</i> and any third party who is to provide any part of the <i>works</i> in order to achieve a smooth transfer of the <i>works</i> to the <i>Employer</i> or a replacement contractor, so as to avoid undue delay or inconvenience the <i>Contractor</i> as soon as practicable vacates the Site and leaves the Site in a clean and orderly condition and in the event that the <i>Employer</i> wishes to enter into another contract for the provision of the <i>works</i> or any part thereof the <i>Contractor</i> complies (and ensures its Subcontractors comply) with all reasonable requests of the <i>Employer</i> to provide in confidence information relating to the <i>works</i> or the relevant part thereof.
	Suspension of Payments	
	Add new Clauses as follows:	
	94.1	Upon the occurrence of a Contractor Default Reason for Terminating or the <i>Employer</i> having knowledge of an occurrence that may lead to a Contractor Default Reason for Terminating, the <i>Employer</i> may at its option and without prejudice to any of its rights or remedies, suspend any payment due from the <i>Employer</i> to the <i>Contractor</i> in relation to this contract or retain any other amount due from the <i>Employer</i> to the <i>Contractor</i> . The <i>Employer</i> gives notice of intention to withhold payment under Clause Y2.3 (if applicable).
	94.2	Prior to exercising the rights under Clause 94.1 the <i>Employer</i> serves a notice on the <i>Contractor</i> informing it that the <i>Employer</i> intends to exercise such rights, unless the <i>Contractor</i> remedies the matter or matters referred to in the notice within the time period specified in the notice, which time period is such time period as is reasonable in all the circumstances and in any event does not exceed 7 days (or such longer period as may be agreed by the <i>Employer</i> in writing at its absolute discretion).
	94.3	If the matter or matters notified in the notice served under Clause 94.2 is or are not remedied within the time period referred to in such

		<p>notice, then the <i>Employer</i> may suspend or retain payments in full without further notice being required and no further payments become due to the <i>Contractor</i> under this contract until such time as the following conditions are satisfied:</p> <ul style="list-style-type: none"> • there is no continuing Contractor Default Reason for Terminating • there are no other material unperformed obligations under this contract • the <i>Contractor</i> demonstrates to the reasonable satisfaction of the <i>Employer</i> and <i>Project Manager</i> that it is capable of performing all of its obligations under this contract and • the <i>Contractor</i> resumes performance of all of its obligations under this contract.
	94.4	<p>Upon satisfaction of all of the conditions in Clause 94.3 payments again become due to the <i>Contractor</i> in accordance with this contract. The <i>Employer</i> is entitled to retain from the <i>Contractor</i> costs incurred by the <i>Employer</i> arising from or in connection with the relevant Contractor Default Reason for Terminating, including without limitation, all costs incurred by the <i>Project Manager</i> in serving notices, engaging Others to perform the obligations of the <i>Contractor</i> and all administrative expenses of the <i>Project Manager</i>, <i>Employer</i> and other staff including general staff costs and overheads which relate or are attributable to such performance or engagement.</p>
Partial Suspension		
Add new Clauses as follows:		
	95.1	<p>Upon the occurrence of a Contractor Default Reason for Terminating or the <i>Employer</i> having knowledge of an occurrence that may lead to a Contractor Default Reason for Terminating, the <i>Employer</i> may at its option and without prejudice to any of its rights or remedies, suspend performance of part of the <i>Contractor's</i> functions to be performed by it under this contract and thereafter itself perform or procure Others to perform such part of the functions until such time as the <i>Contractor</i> demonstrates to the reasonable satisfaction of the <i>Employer</i> and <i>Project Manager</i> that it will perform and is capable of performing its obligations under this contract.</p>
	95.2	<p>In the case of a partial suspension of the performance by the <i>Contractor</i>, the <i>Contractor</i> reimburses the <i>Employer</i> all additional costs incurred by the <i>Employer</i> in performing or engaging Others to perform the functions of the <i>Contractor</i> which are suspended (including, without limitation, the relevant administrative expenses of the <i>Project Manager</i> and the <i>Employer</i>, including an appropriate sum in respect of general staff costs and overheads).</p>
Supervision		
Add new Clause as follows:		
	96.1	<p>In the event that the <i>Contractor</i> has substantially failed to comply with his obligations, which includes, but is not limited to, any breach notified to the <i>Contractor</i> by the <i>Project Manager</i> which is not remedied within the period specified in the notice and/or a breach which is repeated more than once within a Contract Year the <i>Project Manager</i> may (without prejudice to any other right or remedy available to the <i>Employer</i>) by notice to the <i>Contractor</i> indicate the</p>

		intention to appoint a person to monitor and supervise the <i>Contractor</i> until such time as the <i>Contractor</i> shall have demonstrated to the reasonable satisfaction of the <i>Project Manager</i> that it is capable of performing its obligations under the contract. The <i>Contractor</i> shall compensate the <i>Project Manager</i> for all costs incurred in connection with such supervision (including, without limitation, the relevant administrative expenses and an appropriate sum in respect of general staff costs and overheads).
Z46	Dispute Resolution	
	Add new Clause as follows:	
	W2.1(3)	Notwithstanding Clause W2.1(1), the Parties refer any disputes to the <i>Contractor's</i> senior representative and the <i>Employer</i> who meet to discuss and seek to resolve any disputes without the need to refer them to adjudication.
Z47		Not used
Z48	Parent Company Guarantee	
	Add new Clause as follows:	
	X4.2	If the <i>Contractor's</i> parent company does not in the <i>Employer's</i> opinion have sufficient assets to guarantee the <i>Contractor's</i> obligations under this contract, the <i>Contractor</i> gives to the <i>Employer</i> a guarantee in the form referred to in Clause X4.1 from such other Associated Company as is required by the <i>Employer</i> .
Z49-Z50		Not used
Z51	Not used	
Z52		Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996
	Delete Clause Y2.2 and replace as follows:	
		<p>The date on which payment becomes due is 21 days after the assessment date.</p> <p>The final date for payment is 14 days after the date of the Contractor's invoice submitted in accordance with clause 51.5.</p> <p>The Project Manager's certificate is the notice of payment to the Contractor specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated.</p>
Z53-Z101		Not used
Z102	Notice of Breach	
	102.1	Without prejudice to any other obligation under this contract the <i>Contractor</i> notifies the <i>Project Manager</i> of the occurrence of any breach of its obligations under this contract as soon as practicable after it becomes aware of such matter but in any case within 7 days of such matter becoming apparent to the <i>Contractor</i> or, if earlier, of the date upon which the same ought reasonably to have become apparent to the <i>Contractor</i> .
	102.2	If at any time the <i>Project Manager</i> is reasonably of the opinion that the <i>Contractor</i> has failed to perform any of its obligations under this contract (whether or not such failure has been notified under Clause

		102.1) and such failure is capable of remedy, then the <i>Project Manager</i> may serve a notice (a “Remedial Notice”) on the <i>Contractor</i> requiring the <i>Contractor</i> (at its own cost and expense and such instruction is not a compensation event) to remedy such failure (and any damage resulting from such failure) within a reasonable period (the “Remedial Period”) and for the avoidance of doubt a failure to perform includes a failure to remedy as required by this Clause 102.2.
	102.3	<p>Where the <i>Contractor</i> has committed a breach of its obligations under this contract and more than three Remedial Notices have been given at any time within the period of six months ending on the date of such breach in respect of breaches which are similar in nature then the <i>Project Manager</i> may serve a notice on the <i>Contractor</i> (a “Persistent Breach Warning Notice”) which</p> <ul style="list-style-type: none"> • specifies that it is a Persistent Breach Warning Notice giving reasonable details of the breach, • gives reasonable details of the previous Remedial Notices and the similarity of the breaches alleged and • states that such breach is a breach which may result in termination of this contract if it continues or recurs.
	102.4	If following service of a Persistent Breach Warning Notice the <i>Contractor</i> disputes that such a notice should be served the matter is dealt with under the provisions of Clause W2 (Dispute Resolution).
	102.5	A Persistent Breach Warning Notice may not be served in respect of any breach in respect of which a separate Material Breach Warning Notice has already been served (but such a breach may constitute one of the breaches similar in nature for the purpose of this Clause).
	102.6	<p>Without prejudice to any other right or remedy available to the <i>Employer</i>, if:</p> <p>102.6.1 the <i>Contractor</i> has committed any material breach of its obligations under this contract which is capable of remedy and</p> <p>102.6.1.1 two or more Remedial Notices have been given at any time within the period of one year ending on the date of the breach referred to in Clause 102.6.1 in respect of material breaches which are similar to the breach referred to in Clause 102.6.1; or</p> <p>102.6.1.2 one or more other Remedial Notices have been given at any time within the period of eight months ending on the date of the breach referred to in Clause 102.6.1 in respect of material breaches which are similar to the breach referred to in Clause 102.6.1 but the <i>Project Manager</i> has within the said period of eight months served a Remedial Notice on the <i>Contractor</i> in respect of any material breach which was capable of remedy and the applicable Remedial Period expired prior to such breach having been remedied; or</p> <p>102.6.1.3 more than four Remedial Notices have been given at any time within the period of one year ending on the date of the breach referred to in Clause 102.6.1 in respect of material breaches which are not similar to the breach referred to in Clause 102.6.1</p>

		then the <i>Project Manager</i> may give written notice (herein called a “Material Breach Warning Notice”) to the <i>Contractor</i> setting out in general terms the matter or matters giving rise to such notice. Any such notice states on its face that it is a “Material Breach Warning Notice” and is signed by or on behalf of the <i>Employer</i> .
Z103	Step-In Rights	
	103.1	Without prejudice to Clause 103.2, if at any time the <i>Project Manager</i> serves a Remedial Notice and the <i>Contractor</i> fails to remedy the failure within the Remedial Period, then the <i>Employer</i> may (without prejudice to any other right or remedy available to it) itself take such steps as necessary to remedy such failure or engage Others to take such steps, and the provisions of Clause 103.3 apply.
	103.2	Notwithstanding any other provision of this contract and without prejudice to any other right or remedy of the <i>Employer</i> where it appears to the <i>Project Manager</i> necessary in order to secure the carrying out of any statutory function where this is contributed to by any non-compliance with or breach of the <i>Contractor</i> ’s obligations under this contract the <i>Project Manager</i> may give notice requiring the <i>Contractor</i> forthwith to take such steps as it considers necessary or expedient to mitigate or preclude such state of affairs. In the event that the <i>Contractor</i> fails to take such steps as the <i>Project Manager</i> thinks necessary and within such time as the <i>Project Manager</i> thinks fit, then the <i>Employer</i> may take such steps itself or engage Others to take such steps, and the provisions of Clause 103.3 apply.
	103.3	Except to the extent that the Parties agree, or it is determined under Clause W2 (Dispute Resolution), that the <i>Contractor</i> had not failed to perform its obligations under this contract (in the case of any action taken pursuant to Clause 103.1) or the <i>Project Manager</i> was not acting reasonably in requiring the <i>Contractor</i> to take such steps as are referred to in Clause 103.2 or, such steps were not necessary in order to secure the carrying out of any statutory function (any such determination to be made on the basis of the facts known to the <i>Project Manager</i> or of which the <i>Project Manager</i> ought reasonably to have been aware having made reasonable enquiries at the time it took or required such action to be taken), the <i>Contractor</i> reimburses the <i>Employer</i> for all costs incurred by it in taking the steps or engaging Others to take the steps referred to in Clause 103.1 or Clause 103.2 (including, without limitation, the relevant administrative expenses of the <i>Employer</i> and the <i>Project Manager</i> , including an appropriate sum in respect of general staff costs and overheads).
Z104	Audit and Compliance	
	104.1	The <i>Contractor</i> co-operates fully and in a timely manner with any investigation relating to security, regulatory or public law compliance and/or probity which is carried out by or on behalf of the <i>Employer</i> including any investigation proposed or being carried out by the Local Government Ombudsman (pursuant to Section 26 of the Local Government Act 1974 or otherwise)) or any auditor (whether internal or external) of the <i>Employer</i> (whether made prior to the end of the <i>defect correction period</i> or any time within a period of eighteen

		<p>months thereafter) and uses its best endeavours to make any staff (whether of the <i>Contractor</i> or any Subcontractor) or Subcontractors identified by the <i>Employer</i> or any auditor available to be interviewed by the <i>Employer</i> or auditor for the purposes of, and uses reasonable endeavours to ensure that they co-operate with, the investigation. Subject to any legal restriction on their disclosure, the <i>Contractor</i> provides all documents, records or other material of any kind which are reasonably required by the <i>Employer</i> or any auditor for the purposes of the investigation and provides, or procures the provision of, any oral or written explanation relating to the same. The <i>Employer</i> has the right to retain any such material for use in connection with the investigation and provides the <i>Contractor</i> with a copy of any material retained.</p>
	104.2	<p>Without prejudice to Clause 104.1, the <i>Contractor</i> permits and co-operates fully with the <i>Employer</i>, the <i>Project Manager</i> and/or any auditors (whether internal or external) to ensure that the <i>Employer</i>, the <i>Project Manager</i> and/or any such auditors have access at reasonable hours upon giving the <i>Contractor</i> reasonable notice, including the right to enter at all reasonable times (provided that the <i>Contractor</i> allows immediate access without notice if required) upon any property used by the <i>Contractor</i> to Provide the Works or any part of it including without limitation any training facilities or places where work is otherwise being prepared in connection with the <i>works</i>, for the following purposes</p> <ul style="list-style-type: none"> • to examine and take copies of any and all documents and information in the possession, custody or control of the <i>Contractor</i> relating to the <i>works</i> and/or this contract on an open book basis, including any computer data held for the purposes of the <i>works</i> and any books and records (including without limitation all financial records and all documents, computer records or data relating to time recording of staff in relation to the performance of the <i>works</i> and any work sheets). The <i>Contractor</i> procures that any person acting on its behalf, including any Subcontractor, any subcontractor of a Subcontractor is obliged to provide documents and information as identified in this Clause on the same terms as this Clause; • to interview the <i>Contractor's</i> staff, auditors, Subcontractors, staff of Subcontractors and any subcontractors of Subcontractors for any purpose including without limitation the purpose of certifying all information relating to the financial systems used by the <i>Contractor</i> and to verify the accuracy of any accounting statement, charge, computation, assessment of an amount due or payable or claim made pursuant to any of the provisions of this contract. The <i>Contractor</i> uses its best endeavours to make any such staff and/or Subcontractors identified by the <i>Employer</i>, the <i>Project Manager</i> and/or any auditors available to be interviewed and uses all reasonable endeavours to ensure that they co-operate fully with the <i>Employer</i>, the <i>Project Manager</i> and/or any auditors for that

		<p>purpose;</p> <ul style="list-style-type: none"> to inspect and view the operation, the state and progress of any part or parts of the <i>works</i> (such right not to be exercised so as to unreasonably delay or impede the progress of the <i>works</i>) and to ascertain whether the <i>works</i> are being provided in accordance with this contract and otherwise monitor compliance by the <i>Contractor</i> with its obligations.
	104.3	<p>In addition to the other rights under this Clause 104</p> <p>the <i>Contractor</i> supplies to the <i>Project Manager</i> such information in respect of the <i>service</i> as is reasonably required by the <i>Project Manager</i>. Without limitation to the generality thereof the <i>Contractor</i> supplies and makes available for inspection by the <i>Project Manager</i> all documentation, including but not limited to, records relating to health and safety including risk assessments, procedures, safe systems of work, method statements, maintenance records, training records, notes of meetings, inspection reports and notes, incident and accident investigations and reports and if the <i>Project Manager</i> requires substantiation for any rate, cost or charge that the <i>Contractor</i> wishes to make under this contract, the <i>Contractor</i> provides full information to the satisfaction of the <i>Project Manager</i>, the <i>Employer</i> or its auditors including without limitation all documentation and records in order that the number of hours worked and the Plant and Materials used as claimed and/or assessed by the <i>Contractor</i> may be verified, if appropriate before such rate, cost or charge is included in any application for payment or invoice.</p>
	104.4	<p>Where any information required under this Clause is confidential or commercially sensitive, the <i>Employer</i> procures that the <i>Project Manager</i> and any auditor treat the information as Confidential Information in accordance with this contract provided that the auditors may also pass such information to the <i>Employer</i> and those persons which the auditor being deemed hereby to have equivalent rights to the <i>Employer</i> could pass it in accordance with this contract.</p>
	104.5	<p>The <i>Contractor</i> ensures that its financial records relating to the provision of the <i>works</i> conform to all applicable accounting standards and practices and supplies to the <i>Project Manager</i> within twelve weeks of the end of the <i>Contractor's</i> financial year at the cost of the <i>Contractor</i> a certificate (dated no earlier than two weeks previous to its supply to the <i>Project Manager</i>) signed by its auditors certifying they are satisfied with the <i>Contractor's</i> financial systems in respect of that financial year.</p>
	104.6	<p>The <i>Employer</i>, the <i>Project Manager</i> and any auditors have absolute discretion to determine whether to exercise the audit rights in this Clause 104 on a sample basis or in respect of all services and works performed under the Contract.</p>
	104.7	<p>If as a result of the exercise of the powers under this Clause 104 or otherwise any inaccuracy in any assessment, application for payment, certificate or invoice issued prior thereto is revealed, the <i>Project Manager</i> is entitled (without limitation to any other remedies available to the <i>Employer</i> and the <i>Project Manager</i>) to assess amounts himself under Clause 50.4, to give notice of intention to withhold payment in</p>

		accordance with Clause Y2.3 and/or correct any wrongly assessed amount due in accordance with Clause 50.5 (as applicable).
Z105- Z124		Not used
Z125	Assignment	
		The <i>Contractor</i> does not assign, novate or otherwise dispose of this contract or any part thereof without the prior consent in writing of the <i>Employer</i> .

ECC Contract - Contract Data Part Two (package orders)

Contract Data Part two – Data provided by the Contractor

Statements
given in all
contracts

- The *Contractor* is

Name:

Address:

- The *direct fee percentage* is %
- The *subcontracted fee percentage* is %
- The *working areas* are the Site and:
- The key people are

- (1) Name:
Job: Contractor's Director
Responsibilities:
Qualifications:
Experience:
- (2) Name:
Job: Contractor's Site Agent
Responsibilities:
Qualifications:
Experience:
- (3) Name:
Job: Contractor's Site Safety Officer
Responsibilities:
Qualifications:
Experience:
- (4) Name:
Job: Contractor's Quality Manager
Responsibilities:
Qualifications:
Experience:
- (5) Name:
Job: Contractor's Traffic Safety & Control Officer
Responsibilities:
Qualifications:
Experience:

- (6) Name:
Job: Contractor's Designer
Responsibilities:
Qualifications:
Experience:
- (7) Name:
Job: Contractor's General Foreman
Responsibilities:
Qualifications:
Experience:

Optional
Statements

- The following matters will be included in the Risk Register:
- **If a programme is to be identified in the Contract Data:**

The programme identified in the Contract Data is

- If Option A is used
The *activity schedule* is set out within each *Package Order*
- The tendered total of the Prices is *set out within each Package Order*
- The percentage for people overheads is %
- The published list of Equipment is the last edition of the list published by **the Civil Engineering Contractors Association**
- The percentage for adjustment for Equipment in the published list is % (state plus or minus).
- The rates for other Equipment are

Equipment	size or capacity	rate
.....

.....

.....

.....

Optional
Statements
(continued)

- The hourly rates for Defined Cost of design outside Working Areas are

category of employee	hourly rate
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.....
.....
.....
.....

- The percentage for design overheads is N/A %
- The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are: N/A

People Category (continued)	All inclusive Hourly Rate (excluding elements deemed included in the People overhead percentage) (continued)
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Optional
Statements
(continued)

Unskilled labour to include plant operators of small plant and dumpers up to and including 10 tonne capacity and drivers of vans and pickups.
Skilled labour to include, craftsmen, steel fixers, mechanics, and welders as defined in the Working Rule Agreement, drivers / operators of HGV's, gully emptiers, road sweepers, paving machines,

.....

excavating, earthmoving and
compaction equipment which
contain a cab but excluding
mini-diggers.

SCHEDULE C - SELECTION AND QUOTATION PROCEDURES

- 1.1 The selection procedure is the process by which the Employer identifies the Supplier or Suppliers who are capable of performing the proposed Work Package. The Employer will consider the following matters when drawing his conclusions:
 - 1.1.1 The Supplier's capability to perform the work detailed within the proposed Work Package. Consideration will be given to the relevant sections of the Quality Submission submitted at the original tender stage to establish whether the Supplier has the expertise to provide the proposed Work Package;
 - 1.1.2 Capacity to meet the required timescales;
- 1.2 Following consideration of the matters above, those Suppliers who are capable of performing a proposed Work Package will be invited into the quotation procedure as detailed in paragraph 2.
- 2.1 In this RFQ procedure:
 - 2.1.1 a reference to the Framework Contract Price List means the price list incorporated in the Framework Contract; and
 - 2.1.2 a reference to the Price List means the Price List submitted by the Supplier and accepted by the Employer for the purposes of an individual Work Package in accordance with this quotation procedure.
- 2.2 The quotation procedure is the process by which the Employer obtains a quotation from a selected Supplier or Suppliers in respect of a Work Package following the selection procedure.
- 2.3 Subject to the selection procedure above the quotation procedure shall take the form of a mini-competition whereby all suppliers shall be requested to provide a quotation
- 2.4 When a Supplier is requested to provide a quotation, he shall provide information requested by the Employer which may include some or all of the following areas:
 - 2.4.1 Quality**
 - a) the Supplier's detailed proposals for the delivery of the Work Package including an outline programme;
 - b) the Supplier's proposals in respect of traffic management;
 - c) the Supplier's proposals for key personnel and key Subcontractors;
 - d) the Supplier's proposals in respect to Temporary Works;
 - e) any other information which is linked to the subject matter of the contract and deemed necessary by the Employer.
 - 2.4.2 Price**
 - a) the Supplier's proposed Price List, being the lump sum prices, priced activity schedule or combination of both, identifying separately those costs in respect to Temporary Works having due regard for any requirements and constraints contained in the Work Package;
 - b) Irrespective of whichever pricing option the Employer chooses, the Supplier shall clearly identify the costs associated with Temporary Works;
 - c) Rates and lump sums used in the proposed Price List shall be either equal to or lower than the relevant rates and lump sums included in the Framework Contract Activity Schedule. Where items of work described in the Work Package are not included in the Framework Contract Activity Schedule then new rates and/or lump sums shall be calculated by the Supplier having due regard to those contained in

the Framework Contract Activity Schedule and these shall be used to calculate the price for the work described in the Work Package;

2.5 Mini-Competition

- 2.5.1 Subject to above the Employer will carry out a Request for Quotation through holding a mini-competition in respect of any Work Package by inviting quotations from more than one Supplier.
- 2.5.2 Potential Work Packages may take but not be limited the following three forms:
 - a) A Work Package for one-off jobs
 - b) A Work Package consisting of grouping a number of jobs together.
- 2.5.3 Quotations for a mini competition shall be submitted electronically on or before a specified closing time and date.
- 2.5.4 After the date for return of quotations has passed the Employer shall consider and evaluate the quotations and, in his absolute discretion, award a Package Order to the Supplier who has offered the most economically advantageous tender.

2.6 Evaluation and Award of Quotations

- 2.6.1 Quality proposals will be scored using the Standard Scoring Matrix as detailed below however the Employer may alter this depending on the nature of the job however this will be clearly set out within the invitation to provide a quotation.
- 2.6.2 Question weightings in respect to the quality proposals will be defined within the mini-competition.
- 2.6.3 Any Tenderer scoring 3 or below on their Quality Submission proposal using the Quality Submission Standard Scoring Matrix may be deemed to have failed and will be excluded from that mini competition.
- 2.6.4 The most competitive price will be assigned maximum marks within the mini-competition for the commercial assessment. Other prices will be scored as a % variance against this price.
- 2.6.5 If the quotation is not acceptable, the Project Manager may change the Work Package and ask for revised quotations (subject to paragraph 1) from all bidders. He may decide that the cost of the work is such that the Work Package should not be carried out, either by these Suppliers or at all.
- 2.6.6 The Employer is not bound to award a Package Order in respect of any quotation provided by a Supplier.

Standard Scoring Matrix

Score	Criteria for Awarding Score
10	The response has covered all of the requirements of the question
6	The response has covered the majority of the requirements of the question with a small proportion of requirements only partially covered or not covered at all.
3	The response has covered some of the requirements of the question however more than a small proportion of the points only partially covered or not covered at all.
1	The response has covered only a few of the requirements of the question or has only partially covered those requirements or not covered them at all.
0	The response has not addressed any of the requirements of the question.

SCHEDULE D
DEED OF AGREEMENT FOR PACKAGE ORDERS

THIS AGREEMENT is made the day of 20.....

BETWEEN

- (1) Somerset County Council, whose address is County Hall, The Crescent, Taunton, Somerset, TA1 4DY (the “**Employer**”); and
(2) [] (the “**Contractor**”);

BACKGROUND

- (A) The Employer established a framework for the repair, maintenance and improvement of structures on, adjacent to and surrounding the highway and on the rights of way networks.
- (B) The *Contractor* was appointed to the framework and executed the framework agreement which is dated *[insert date of framework agreement with the Contractor]* (the “**Framework Agreement**”).
- (C) On the *[insert date of issue of tender]* the *Employer* invited the *Contractor* along with other framework suppliers to tender for *[insert description of works required]* in accordance with the *quotation procedure* (as defined in the Framework Agreement).
- (D) On the *[insert date of tender response]* the *Contractor* submitted a tender response and was subsequently selected by the *Employer* to provide the *works*.
- (E) The *Contractor* has agreed to provide the *works* in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. The *Contractor* Provides the Works in accordance with the *conditions of contract* and the Framework Agreement.
2. The *Employer* will pay the *Contractor* the amount due and carry out his duties in accordance with the *conditions of contract* and the Framework Agreement.
3. The documents forming part of this contract are:
 - the *conditions of contract*
 - the Contract Data part one
 - the Contract Data part two
 - the documents identified in the Contract Data
4. The Framework Agreement, *conditions of contract* and other documents which are incorporated into and form part of this contract contain all the terms which the *Employer* and the *Contractor* have agreed in relation to the subject matter of this contract, and supersede any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.
5. If there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:
 - this Deed of Agreement
 - the Contract Data part one
 - the Contract Data part two
 - the clauses under Option Z of the *conditions of contract*
 - the *conditions of contract* excluding the clauses under Option Z
 - the Works Information
 - the Site Information
 - the Accepted Programme
 - the Activity Schedule
 - the Work Package Quality Submission
 - the Framework Contract Quality Submission

IN WITNESS WHEREOF the Parties have caused this contract to be executed as a deed by their duly authorised representatives and delivered on the date first above written.

The Common Seal of
SOMERSET COUNTY COUNCIL
was affixed in the presence of:

[] (print name of authorised signatory)

..... signature

Authorised Signatory

Executed as a deed by [NAME OF COMPANY]

acting by [] (print name of Director)

..... signature of Director

in the presence of

[] (print name of Witness)

..... signature of Witness

..... Address of Witness

.....

.....