

DATED

Deed of Agreement
incorporating the NEC3 Framework Contract (June 2005)
Concerning Water & Environment Management

Between

ENVIRONMENT AGENCY.

and

THIS DEED is made the day of 2013

BETWEEN

- (1) Environment Agency of Horizon House Deanery Road, Bristol BS1 5AH (the "**Employer**"); and
- (2)
(Company Number) of/whose registered address is
at
(the "**Supplier**").

(together referred to as the "**Parties**" and individually as a "**Party**")

BACKGROUND

- A) The *Employer* and *Supplier* wish to enter into a relationship whereby the *Employer* may, as required, engage the *Supplier* to provide Work Packages, Package Orders and Time Charge Orders or other associated matters from time to time within the Scope of the Lot or Lots for which the *Supplier* has been awarded this Framework Agreement.
- B) The *Employer* has established a number of framework agreements, including this Framework Agreement, for the benefit of itself and other public sector bodies stated in the OJEU Notice Ref: 2011/S 243-393811.
- C) The *Supplier* has been appointed to provide Work Packages, Package Orders and Time Charge Orders for Lot(s) [] only.

IT IS AGREED that

The *Employer* and *Supplier* enter into this Framework Agreement on the terms set out in the NEC3 Framework Contract (June 2005) together with the Additions and Amendments to Conditions of this Framework Agreement and the Additional Conditions of this Framework Agreement – Option Z .

Part One - Data Provided by the *Employer*

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

The conditions of this Agreement are **the Clauses of the NEC3 Framework Contract (June 2005)** and Z Clauses, incorporating the Additions and Amendments to Conditions of this Framework Agreement and the Additional Conditions of this Framework Agreement – Option Z .

▪ **The *Employer* is;**

Name: Environment Agency

Address: Horizon House, Deanery Road, Bristol BS1 5AH

The *Employer's Framework Manager* is

Name

Address

The Framework Information is in the WEM Framework Information, this Framework Agreement and the Schedules and Annexes attached hereto or referred to therein

- The *Scope* is the supply of goods, services and works including where applicable, without limitation, equipment, plant, materials, including design installation *and* commissioning and the production of associated documentation. The *Scope* is further detailed in Schedule 1 which also sets out the scope of each of the 4 Lots.

- The *selection procedure* is found in Schedule 6
- The *quotation procedure* is found in Schedule 6

- The *commencement date* is the date of signing the Framework Agreement by the last signing party and the date inserted at the head of this Framework Agreement.

- The *end date* is 4 years after the *commencement date* with a further 2 year extension (or any shorter period up to 2 years) if the *Employer* chooses to extend the Framework Agreement.

The Data which will apply to all Time Charge Orders is:

The Contract Data part one entries from the NEC3 Engineering and Construction Contract Option E as set out (and amended) in Schedule 2 Part 1 or the NEC3 Professional Services Contract Option E as set out (and amended) in Schedule 2 Part 2

The Data which will apply to all Package Orders is:

The Contract Data part one entries from the NEC3 Engineering and Construction Contract as set out (and amended) in Schedule 2 Part 1 (Options A,C or E) or the NEC3 Professional Services Contract (Options A,C or E) as set out (and amended) in Schedule 2 Part 2

Part Two - Data Provided by the Supplier

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

The *Supplier* is;

Name

Address

The *Supplier's Framework Manager* is

Name

Address

- **The *quotation information* is in the *Supplier's Price Workbook* and the other Tender Return Documents (for each Lot) as set out in full in Schedule 21**

The Data which will apply to all Time Charge Orders is:

The Data Part two entries from the NEC3 Engineering and Construction Contract as set out (and amended) in Schedule 3 Part 1 or Data Part two entries from the NEC3 Professional Services Contract as set out (and amended) in Schedule 3. Part 2

The Data which will apply to all Package Orders is:

The Data Part two entries from the NEC3 Engineering and Construction Contract as set out (and amended) in Schedule 3 Part 1 or Data Part two entries from the NEC3 Professional Services Contract as set out (and amended) in Schedule 3. Part 2

ADDITIONS AND AMENDMENTS TO CONDITIONS OF THIS FRAMEWORK AGREEMENT

Additional and Amended Clauses

The conditions of this Framework Agreement are the Clauses of the NEC3 Framework Contract (June 2005) as amended by these Additions and Amendments to the Conditions of this Framework Agreement.

AMENDMENTS AND ADDITIONS TO EXISTING CLAUSES

Actions	10.1	Delete clause 10.1 and replace with: “The <i>Employer</i> and the <i>Supplier</i> shall act as stated in this Framework Agreement (“Framework Agreement”) and in the spirit of mutual trust, co-operation and in accordance with the provisions set out in Schedule 4”
Identified and defined terms	11.1	In the first sentence of sub-clause 11.1 delete the words “these conditions of contract” and replace with: “this Framework Agreement”
	11.2(3)	In sub-clause 11.2(3) delete the word “contract” and replace with: “Framework Agreement”
	11.2(5)	In sub-clause 11.2(5) delete the words “proposed Work Package” and replace with the following: “ undertake Emergency Works pursuant to Schedule 16”
The Parties’ obligations	20.1	Delete sub-clause 20.1 and replace with: “When the <i>Employer</i> requires work to be carried out with the scope he may select a supplier using the selection procedure to compete for a Work Package.”
	20.2	In sub-clause 20.2 delete the word “contract” and replace with: “Framework Agreement”
Time Charge Order	21.1	Delete sub-clause 21.1 and replace with the following: “If the <i>Employer</i> requires the <i>Supplier</i> to undertake Emergency Works or other matters associated with the <i>scope</i> and the <i>Supplier</i> is selected pursuant to the <i>selection procedure</i> set out in Schedule 6 the <i>Employer</i> issues a Time Charge Order to the <i>Supplier</i> .”
Package Order	22.2	In sub-clause 22.2 second sentence delete the word “one” (which precedes the word “week”) and replace with the following word: “two or such other time as the <i>Employer</i> may stipulate”
	22.2	In sub clause 22.2 third bullet point after the words “a notification” insert the following words: “with reasons”.
Termination	90.1	Delete sub-clause 90.1 and replace with “The Parties may only terminate this Framework Agreement in accordance

with clause Z15.”

- 90.2 Delete the following words in sub-clause 90.2 “After a Party has notified termination” and replace with “When this Framework Agreement terminates in accordance with clause Z15,”

ADDITIONAL CONDITIONS OF THIS FRAMEWORK AGREEMENT – OPTION Z

Z1	Additional Defined Terms
Z2	Award of Work Packages, Package Orders and Time Charge Orders
Z3	Best Value
Z4	Insurance
Z5	Pricing of Work Packages Work Orders and Time Charge Orders
Z6	No Liability
Z7	Parent Company Guarantee
Z8	Performance Management
Z9	Framework Management
Z10	Quality Assurance
Z11	Standards and Specifications
Z12	Health and Safety
Z13	Set off
Z14	Conflicts of Interest
Z15	Termination Events & Suspension
Z16	Recovery upon Termination
Z17	Rights of Third Parties
Z18	Governing Law and Jurisdiction
Z19	Employment Provisions - TUPE
Z20	Publicity, Media and Official Enquiries
Z21	Severability
Z22	Cumulative Remedies
Z23	Waiver
Z24	Collateral Warranty, Performance Bond & Project Bank Account

Z25	Dispute Resolution Procedure
Z26	Entire Agreement
Z27	Financial Information and Audit
Z28	Supplier Development
Z29	No Assignment
Z30	Prevention of Bribery and Corruption
Z31	Equality and non-discrimination
Z32	Survival
Z33	Knowledge Retention
Z34	Precedence
Z35	Variation
Z36	Environmental Consideration
Z37	Incentivisation
Z38	Project Cost Tool
Z39	No Guarantee of Work
Z40	Income Tax and National Insurance Contributions
Z41	Payment
Z42	Mandatory Security and vetting procedures for Staff with access to the <i>Employer's</i> IT systems
Z43	Confidentiality
Z44	Data Protection
Z45	Freedom of Information
Z46	Logos and Trademarks
Z47	Intellectual Property Rights

SCHEDULES

1.	Scope and Lots
2.	The Data Part One Entries
3.	The Data Part Two Entries
4.	Collaborative Working
5.	Health & Safety
6.	Lot Selection and Work Allocation
7.	Commercial Approach and Supplier Teams
8.	Supplier Incentives
9.	Payment and Audit Arrangements
10.	Project Cost Tool
11.	Minimum Technical Requirements
12.	Performance Management
13.	Framework Management
14.	Sustainability
15.	Quality and Communications
16.	Emergency Works
17.	Parent Company Guarantee

- | | |
|-----|-----------------------------|
| 18. | Performance Bond |
| 19. | Collateral Warranties |
| 20. | Project Bank Account |
| 21. | Supplier's Tender Documents |

Additional defined terms Z1

Z1.1 Commercially Sensitive Information means the Confidential Information listed in a Work Package, Package Order and/or Time Charge Order comprised of information:-

- (a) which is provided by the *Supplier* and designated as commercially sensitive information by the *Supplier* for the period set out in that Work Package, Package Order or Time Charge Order and/or
- (b) that constitutes a trade secret

Z1.2 Confidential Information means:-

- (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and
- (b) the Commercially Sensitive Information and does not include any information:-
 - (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause Z43.3 (Confidential Information));
 - (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - (iv) is independently developed without access to the Confidential Information

Z1.3 Crown means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf

Z1.4 DPA means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation

Z1.5 Environmental Information Regulations mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations

Z1.6 Equality Act means the Equality Act 2010, as amended from time to time, including all regulations made under it and all relevant statutory codes of practice

Z1.7 FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation

Z1.8 Goods means any goods, articles or materials supplied or to be supplied as specified in the Works Information as defined in a Work Package, Package Order or a Time Charge Order

Z1.9 Information means the Information as the definition given under Section 84 of the Freedom of Information Act 2000

Z1.10 Intellectual Property Rights and IPR means without limitation all intellectual property rights including patents, business service and trade marks and names, designs, registered designs and design rights whether or not registered or capable of registration and the right to apply for and any applications for any of the foregoing, copyrights, database rights, domain names, together with the rights in inventions, methods, processes, drawings, documents, methodologies, utility models semi-conductor chip topography, software, databases, know-how, trade or business secrets and other industrial property, and in each case whether protectable or not and, if protectable, whether an application has been made for protection or not, and all similar industrial, commercial, monopoly or other similar right or asset capable of protection whether present or future, vested or contingent, and wherever protected

Z1.11 Lot(s) means the lots referred to in the OJEU Notice Ref: 2011/S 243-393811 which the *Supplier* has been appointed to provide works and services under and are described more fully in Schedule 1

Z1.12 Others means the list of contracting authorities who are referred to in the OJEU Notice Ref: 2011/S 243-393811

Z1.13 Parties means the *Employer* and the *Supplier* (and referred to individually as a **Party**)

Z1.14 Pre-Existing IPR means any Intellectual Property Rights vested in or licensed to the *Employer* or the *Supplier* prior to or independently of the performance by the *Employer* or the *Contractor* of their obligations under the Framework Agreement a Works Package, Package Order or a Time Charge Order and in respect of the *Employer*

Z1.15 Pre-Qualification Questionnaire means the *Supplier's* written response to the *Employer's* pre-qualification questionnaire issued on 10th February 2012 (Lots 1, 3 & 4) and 4th April 2012 (Lot 2)

Z1.16 Price Workbook means the pricing workbook(s) that the *Supplier* provided to the *Employer* as part of his Tender Return Documents

Z1.17 Project Specific IPRs means:-

- (a) IPRs in items created by the *Supplier* (or by a third party on behalf of the *Supplier*) specifically for the purposes of a Works Package, Package Order or a Time Charge Order including, any and all updates and amendments of these items; and/or
- (b) IPRs arising as a result of the performance of the *Supplier's* obligations under a Package Order, Work Package or Time Charge Order

Z1.18 Requests for Information means a request for information or an apparent request under the FOIA or the Environmental Information Regulations

Z1.19 Staff means all persons employed by the *Supplier* together with the *Supplier's* servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement, Work Package, Package Order and/or Time Charge Order

Z1.20 Suppliers means other contractors and consultants who have entered into similar framework agreements to provide work and/or services within the scope procure under the OJEU Notice Ref: 2011/S 243-393811

Z1.21 Tender Return Documents means the documents submitted by the *Supplier* to the *Employer* in response to the *Employer's* invitation to tender for this Framework Agreement attached at Schedule 21

Award of Work Packages, Package Orders and Time Charge Orders Z2

Z2.1 This Framework Agreement enables Work Packages, Package Orders and Time Charge Orders to be awarded by the *Employer* or any of the Others

Z2.2 When a Work Package, Package Order or Time Charge Order is awarded, the *Supplier* shall enter into a contract with the party awarding the Package Order or Time Charge Order in the form set out in Schedules 2 and 3 unless the *Supplier* and the party (either the *Employer* or Others) awarding the Work Package, Package Order or Time Charge Order considers an alternative form of contract to be more appropriate

Z2.3 Any services or works undertaken prior to the signing of an appropriate contract mentioned in **Z2.2** are done so at the *Supplier's* risk and the *Employer* makes no guarantee of payment for these services or works, save for in the case of Emergency Works let pursuant to Schedule 16 that may be ordered verbally

Best Value Z3

Z3.1 The *Employer* and *Supplier* will act with Others and with each other in a spirit of mutual trust and co-operation to provide best value. Best value shall include, but not be limited to "least whole life cost"

Insurance Z4

Z4.1 The *Supplier* shall be obliged to provide the following insurances irrespective of whether the Work Package, Package Order or a Time Charge Order is used:

- (a) Employer's liability insurance in accordance with the legal requirement in force from time to time for the duration of the agreement;

- (b) Public liability insurance to a minimum limit of indemnity or cover at £15m for a period expiring no earlier than 12 years after the date of practical completion of the last Package Order or Time Charge Order undertaken pursuant to this Framework Agreement;
- (c) Professional Indemnity insurance to a minimum limit of indemnity or cover at £5m for a period expiring no earlier than 12 years after the date of practical completion of the last Package Order or Time Charge Order undertaken pursuant to this Framework Agreement

Z4.2 upon the written request of the *Employer* the *Supplier* shall provide proof that such insurances mentioned in Z4(a) to (c) above are in place and that premiums are kept up to date throughout the life of the Framework Agreement

Z4.3 The *Supplier* shall maintain the above mentioned insurances covering (without limitation) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market and with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than the amounts set out above for any one occurrence or series of occurrences arising out of any one event, provided always that such insurance is available at commercially reasonable rates in the insurance market at large.

Z4.4 Any increased or additional premium required by insurers by reason of the *Supplier's* own claims record or other acts, omissions, matters or things particular to the *Supplier* shall be deemed to be within commercially reasonable rates.

Z4.5 The *Supplier* shall immediately inform the *Employer* if such insurance ceases to be available at commercially reasonable rates in the insurance market at large in order that the *Supplier* and the *Employer* can discuss means of best protecting the respective positions of the *Employer* and the *Supplier* in respect of the Framework Agreement in the absence of such insurance.

Z4.6 The *Supplier* shall fully co-operate with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Supplier* in respect of the net cost of such insurance to the *Supplier* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.

Pricing of Work Packages Package Orders and Time Charge Orders Z5

Z5.1 The prices offered by the *Supplier* for Package Orders Work Packages and Time Charge Orders to the *Employer* (and Others) for works and services within the *scope* shall be no greater than the prices set out in the Price Workbook for the relevant Lot, shall apply the principals set out in Schedule 7 paragraph 5 and paragraph 15 to 29 such prices and may be adjusted in accordance with the provisions of Schedule 7 paragraphs 10 to 14.

No Liability Z6

Z6.1 If the Work Package, Package Order or Time Charge Order is awarded by Others, Others shall be solely responsible for all of its obligations and actions under the Work Package, Package Order or Time Charge Order including payment and no

liability shall attach to the *Employer* or any other party save as expressly provided for.

Parent Company Guarantee Z7

Z7.1 The *Employer* requires the *Supplier* to provide a Parent Company Guarantee. The *Supplier* shall submit a properly executed Parent Company Guarantee in favour of the *Employer* in the same terms of the draft Parent Company Guarantees, set out in Schedule 17 within 21 days of the commencement date.

Performance and Framework Management Z8

Z8.1 The *Employer* shall monitor the *Supplier's* performance under this Framework Agreement in accordance with the provisions detailed in Schedule 12. The *Supplier* shall comply with the provisions of Schedule 12 at no cost to the *Employer*.

Z8.2 Each Party shall administer the Framework Agreement in accordance with the provisions of Schedule 13 at their own cost. Schedule 13 shall only be enforceable by the Parties and avoidance of doubt Schedule 13 shall not be enforceable by Others under this Framework Agreement.

Core Teams Z9

Z9.1 The *Supplier* shall comply with the provision of Schedule 7 paragraphs 1 to 9.

Quality Assurance Z10

Z10.1 The *Supplier* shall operate a quality assurance system that complies with Schedule 15.

Standards and Specifications Z11

Z11.1 Any design to be undertaken by the *Supplier* pursuant to a Work Package, Package Order and/or a Time Charge Order shall take account of and be in accordance with the standard designs set out in Schedule 11.

Z11.2 When providing any work or services under this Framework Agreement the *Supplier* shall take in to account and comply the matters referred to in Schedule 14.

Health and safety Z12

Z12.1 The *Supplier's* health and safety policy shall take account of and be compatible with the *Employer's* code of practice set out or referred to in Schedule 5 and the provisions set out in Schedule 5. The *Supplier* may be required to submit its health and safety policy and procedures to the *Employer*. The *Supplier* shall comply at all times with its health and safety policy and procedures and shall ensure that its subcontractors comply at all times with the subcontractor's health and safety policy and procedures.

Z12.2 The *Supplier* and the *Employer* shall use their best endeavours to ensure that health and safety matters are considered of the highest priority and are managed in a proactive way. The *Supplier* shall treat legal standards for health and safety as a minimum to be exceeded at all times.

Z12.3 The *Supplier* shall demonstrate that all activities on site comply with the *Employer's* current approved code of practice (as detailed or referred to in Schedule 5) and shall maintain all necessary records and evidence on site.

Z12.4 All health and safety incidents that are connected with the works shall be immediately reported to the *Employer*. All incidents that are connected with the Work Package, Package Order or Time Charge Order shall be promptly investigated and the result of the investigation recorded in writing and sent promptly to the *Employer*.

Z12.5 The *Employer* may carry out its own investigation into any health and safety incidents and where it chooses to do so the *Supplier* shall promptly offer all reasonable assistance to the *Employer's* investigating officer at the *Supplier's* own cost.

Z12.6 The parties shall comply with the provisions of paragraphs 2 to 11 of Schedule 5.

Set Off Z13

Z13.1 The *Employer* shall be entitled to deduct from any payment due to the *Supplier*, any sum which is due from the *Supplier* to the *Employer*. Nothing contained in this Framework Agreement (other than as to giving notices) shall limit any right of the *Employer* under any statute or rule of law in the nature of set off or abatement of price.

Conflicts of interest Z14

Z14.1 The *Supplier* discloses to the *Employer* any actual or potential conflict of interest that may arise during the term of the Framework Agreement as soon as practicable after becoming aware of such actual or potential conflict.

Z14.2 The *Supplier* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Supplier* (including without limitation its reputation and standing) and/or the *Employer* of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

14.3 Should the Parties be unable to remove the conflict of interest to the satisfaction of the *Employer*, the *Employer* may terminate this Framework Agreement and any Work Package, Package Order and or Time Charge Order.

Termination Events and Suspension Z15

Z15.1 The *Employer* may at any time by notice in writing terminate this Framework Agreement as from the date of service of such notice, or a later date specified in such notice, if any of the events specified below occur (the "**Termination Events**"); namely, if the *Supplier*:

- (a) is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession;
- (b) commits or is found to have committed an act of grave misconduct in the course of its business or profession;
- (c) fails or has failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
- (d) has made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation;
- (e) fails to obtain any necessary licences or to obtain or maintain membership of any relevant body;

- (f) demerges into two or more firms where the *Employer* believes that the financial standing of the new entity through which it is proposed that the Work Package, Package Order and/or Time Charge Order will be delivered are not satisfactory (taking into account the thresholds set in the Pre-Qualification Questionnaire) or there are security concerns arising from the provision of Work Package, Package Order or Time Charge Order by the new entity;
- (g) if the *Supplier* has been given 4 red cards pursuant to the procedure described in Schedule 5 paragraph 10(c);
- (h) where a conflict of interest has arisen in accordance with Z14 and in the *Employer's* opinion the conflict of interest has not been removed to its satisfaction;
- (i) if the *Supplier* has mis-stated any material matter in his Pre Qualification Questionnaire or Tender Return Document;
- (j) has failed to provide a parent company guarantee in accordance with clause Z7; or
- (K) has breached any other condition of this Framework Agreement

any such termination being deemed to have been caused by a substantial failure of the *Supplier* to comply with his obligations.

Z15.2 The *Employer* may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the *Supplier* where the *Supplier* is a company and in respect of the *Supplier*:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in Z15.2(a)-(g) occurs under the law of any other jurisdiction.

Z15.3 The *Employer* may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the *Supplier* where the *Supplier* is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the *Supplier's* creditors; or
- (b) a petition is presented and not dismissed within fourteen (14) days or order made for the *Supplier's* bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the *Supplier's* assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the *Supplier* is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the *Supplier's* assets and such attachment or process is not discharged within fourteen (14) days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in Z15.3(a)-(g) occurs under the law of any other jurisdiction.

Z15.4 The *Supplier* shall notify the *Employer* immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the *Supplier* undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The *Employer* may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the *Supplier* within six (6) Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the *Employer* becomes aware of the Change of Control,

but shall not be permitted to terminate where the *Employer's* prior written approval was granted prior to the Change of Control.

Z15.5 The *Employer* may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the *Supplier* where the *Supplier* is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or

- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets; or
- (g) any event similar to those listed in Z15.5(a)-(f) occurs under the law of any other jurisdiction .

Z15.6 The *Employer* may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the *Supplier* where the *Supplier* is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in Z15.6(a) to (j) occurs under the law of any other jurisdiction.

Z15.7 References to the Insolvency Act 1986 in clause Z15 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

Z15.8 Without prejudice to the *Employer's* rights to terminate the Framework Agreement pursuant to Clause Z15.1 to Z15.7 above, if a right to terminate this Framework Agreement arises in accordance with Clause Z15.1 to Z15.7 or where the provisions of Schedule 5 paragraph 10(b) apply, the *Employer* may suspend the *Supplier's* appointment to supply works, services and goods through Work Packages, Package Order and Time Charge Orders, to the *Employer* and Others pursuant to this Framework Agreement by giving notice in writing to the *Supplier*. If the *Employer* provides notice to the *Supplier* in accordance with this Clause Z15.8, the *Supplier's* appointment shall be suspended for the period set out in the notice or such other period notified to the *Supplier* by the *Employer* in writing from time to time.

Recovery upon Termination Z16

Z16.1 On the termination of the Framework Agreement in accordance with Z15, Z40.5 and/or Z30.2, the *Supplier* shall at its cost:

- (a) immediately return to the *Employer* all Confidential Information, Personal Data (as defined in Z44.1) and the *Employer's* IPR in its possession or in the possession or under the control of any permitted *Suppliers* or sub-contractors, which was obtained or produced in the course of providing the works or services pursuant to a Work Package, Package Order or Time Charge Order
- (b) immediately deliver to the *Employer* all property (including materials, documents, information and access keys) provided to the *Supplier*. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the *Employer* to ensure an orderly transition of the provision of works or services to the replacement supplier and/or the completion of any work or service under a Package Order or Time Charge Order in progress; and
- (d) promptly provide all information concerning the provision of the services or works under a Work Package, Package Order or Time Charge Order which may reasonably be requested by the *Employer* for the purposes of adequately understanding the manner in which the works or services have been provided and/or for the purpose of allowing the *Employer* to conduct due diligence.

Z16.2 If the *Supplier* fails to comply with clause Z16.1 (a) and (b), the *Employer* may recover possession thereof and the *Supplier* grants a licence to the *Employer* or its appointed agents to enter (for the purposes of such recovery) any premises of the *Supplier* or its permitted *Suppliers* or sub-contractors where any such items may be held.

Z16.3 Upon the determination of this Framework Agreement upon it reaching the *end date* the *Supplier* shall at its own costs:

- (a) upon the completion of previously let Work Packages, Package Orders and Time Charge Orders immediately return to the *Employer* all Confidential Information, Personal Data (as defined in Z44.1) and the *Employer's* IPR in its possession or in the possession or under the control of any permitted Staff, which was obtained or produced in the course of providing the works or services pursuant to a Work Package, Package Order or Time Charge Order; and
- (b) upon the completion of previously let Work Packages, Package Orders and Time Charge Orders immediately deliver to the *Employer* all

property (including materials, documents, information and access keys) provided to the *Supplier*. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

- (c) Upon termination of previously let Work Packages, Package Orders and Time Charge Orders the *Supplier* shall render reasonable assistance to the *Employer* to the extent necessary to effect an orderly assumption by a replacement supplier or the *Employer* of the works or services undertaken under Work Package, Package Order or Time Charge Order.

Rights of Third Parties Z17

Z17.1 A person who is not a Party to the Framework Agreement (save for Others) shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

Governing Law and Jurisdiction Z18

Z18.1 The Framework Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the *Employer* to take proceedings against the *Supplier* in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

Employment Provisions - TUPE Z19

Z.19.1 In this clause Z19 the following terms shall have the following meanings:

- a) **"Supplier Personnel"** means all Staff, other workers, agents and consultants of the *Supplier* and of any sub-contractors who are engaged in the provision of a Relevant Contract from time to time
- b) **"Employment Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*) as subsequently amended or updated
- c) **"Replacement Supplier"** means any third party service provider appointed by the *Employer* to supply any services which are substantially similar to any of the services provided under a Relevant Contract and which the *Employer* receives in substitution for any of those services following the expiry, termination or partial termination of the Relevant Contract

- d) **“Relevant Contract”** Means Work Package(s), Package Order(s) or Time Charge Order(s) for the supply of services to the *Employer* upon the termination of which some or all of the Supplier Personnel are eligible to be transferred pursuant to the Employment Regulations to the *Employer* or a Replacement Supplier
- e) **“Transferring Employees”** means those employees whose contract of employment will be transferred to the *Employer* or a Replacement Contractor pursuant to the Employment Regulations on expiry or termination of a Relevant Contract

Z19.2 Not later than twelve (12) Months prior to the end of a Relevant Contract (or such other time as the *Employer* and *Supplier* shall agree in writing), the *Supplier* shall fully and accurately disclose to the *Employer* all information that the *Employer* may reasonably request in relation to the Supplier Personnel including the following: the total number of Supplier Personnel whose employment/engagement shall terminate at the end of the Relevant Contract, save for any operation of Law; and

- a) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Supplier Personnel referred to in clause 19.2 above; and
- b) the terms and conditions of employment/engagement of the Supplier Personnel referred to in clause Z19.2 above, their job titles and qualifications; and
- c) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
- d) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

Z19.3 At intervals to be stipulated by the *Employer* (which shall not be more frequent than every thirty (30) days) immediately prior to the end of the Framework Agreement the *Supplier* shall deliver to the *Employer* a complete update of all such information which shall be disclosable pursuant to clause Z19.2.

Z19.4 At the time of providing the information disclosed pursuant to clauses Z19.2 and Z19.3, the *Supplier* shall warrant the completeness and accuracy of all such information and the *Employer* may assign the benefit of this warranty to any Replacement Supplier.

Z19.5 The *Employer* may use the information it receives from the *Supplier* pursuant to clauses Z19.2 and Z19.3 for the purposes of the Employment Regulations and/or

any retendering process in order to ensure an effective handover of all work in progress at the end of the Relevant Contract. The *Supplier* shall provide the Replacement Supplier with such assistance as it shall reasonably request.

Z19.6 Upon on expiry or termination of a Relevant Contract the *Supplier* shall indemnify and keep indemnified and hold the *Employer* (both for themselves and any Replacement Supplier) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the *Employer* or any Replacement Supplier may suffer or incur as a result of or in connection with:

- a) the provision of information pursuant to clause Z19.2; and
- b) any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the *Supplier* or any sub-contractor (of the *Supplier*) in respect of any transferring on or before the end of the Relevant Contract; and
- c) any failure by the *Supplier* or any sub-contractor/consultant to comply with its obligations under Regulation 13 or 14 of the Employment Regulations or any award of compensation under Regulation 15 of the Employment Regulations save where such failure arises from the failure of the *Employer* or a Replacement *Supplier* to comply with its duties under Regulation 13 of the Employment Regulations; and
- d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the *Supplier* or any sub-contractor/consultant to comply with any legal obligation to such trade union, body or person; and
- e) any claim by any person who is transferred by the *Supplier* to the *Employer* and/or a Replacement *Supplier* whose name is not included in the list of Transferring Employees.

Z19.7 If the *Supplier* becomes aware that the information it provided pursuant to clause Z19.2 has become untrue, inaccurate or misleading, it shall notify the *Employer* and provide the *Employer* with up to date information.

Z19.8 This clause Z19 applies during the Framework Agreement and indefinitely thereafter.

Z19.9 The *Supplier* undertakes to the *Employer* that, during the twelve (12) Months prior to the end of a Relevant Contract the *Supplier* shall not (and shall procure that any sub-contractor shall not) without prior written approval of the *Employer* (such approval not to be unreasonably withheld or delayed):

- a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the *Supplier* and the Supplier Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the services pursuant to the Employment Regulations);

- b) terminate or give notice to terminate the employment or engagement of any Supplier Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- c) transfer away, remove, reduce or vary the involvement of any other Supplier Personnel from or in the provision of the services under a Relevant Contract (other than where such transfer or removal that:
 - (i) was planned as part of the individual's career development;
 - (ii) takes place in the normal course of business; and
 - (iii) will not have any adverse impact upon the delivery of the services by the *Supplier*, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the services); or
- d) recruit or bring in any new or additional individuals to provide the services under a Relevant Contract who were not already involved in providing the services prior to the relevant period.

Publicity, Media and Official Enquiries Z20

Z20.1 Without prejudice to the *Employer's* obligations under the FOIA, the Environmental Information Regulations or any obligations under the Public Contracts Regulations 2006 (as amended), or any policy requirements as to transparency, the *Supplier* shall not make any press announcement or publicise the Framework Agreement, a Work Package, a Package Order or Time Charge Order or any part thereof in any way, except with the prior written consent of the other *Employer*.

Z20.2 The *Supplier* shall comply with the provision of Schedule 15 paragraphs 16 to 18.

Z20.3 The *Supplier* shall use its best endeavours to ensure that its Staff, professional advisors and consultants comply with this clause Z20.

Severability Z21

Z21.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed with the invalid provision eliminated.

Z21.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the *Employer* and the *Supplier* shall immediately commence good faith negotiations to remedy such invalidity.

Cumulative Remedies Z22

Z22.1 Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

Waiver Z23

Z23.1 The failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.

Z23.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause Z23.

Z23.3 A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

Collateral Warranty, Performance Bond & Project Bank Account Z24

Z24.1 The *Supplier* shall enter into Collateral Warranties in respect of Package Order, Work Package or Time Charge Order in the form set out in Schedule 19 upon the written request of the *Employer* and Others at no cost to the *Employer* or *Other* within 7 days of receipt of such request but subject to clause Z24.2 below

Z24.2 If the *Employer* or Others is not to be the beneficiary of the collateral warranty, the *Employer* shall only require the *Supplier* to enter into a collateral warranty if it has informed the *Supplier* of the identity of the beneficiary of the collateral warranty prior to the award of the relevant Package Order, Work Package or Time Charge Order.

Z24.3 Where prior to the award of a of Package Order, Work Package or Time Charge Order the *Employer* has informed the *Supplier* that a performance bond is required the *Supplier* shall give the *Employer* a performance bond (in the form set out in Schedule 18 unless otherwise agreed by the parties) provided by a bank or insurer which the *Employer* has accepted for the amount stated by the *Employer*.

Z24.4 The *Employer* may refuse the bank or insurer if the *Employer* considers that the Bank or insurer's financial position is not strong enough to carry the bond.

Z24.5 Where prior to the award of a Package Order, Work Package or Time Charge Order the *Employer* has informed the *Supplier* that a project bank account is required the Work Package, Package Order or Time Charge Order shall have incorporated into it the provisions of Schedule 20.

Dispute Resolution Procedure Z25

Z25.1 The resolution of any dispute should remain at project level until all efforts to resolve the matter have been exhausted. Where the *Employer* and the *Supplier* have been unable to reach agreement at the Work Package, Package Order or Time Charge Order level, prior to the referral of any dispute to the adjudicator, the dispute should be escalated to the respective Framework Managers to attempt to resolve matters of disagreement internally between the parties.

Z25.2 Where matters of disagreement or disputes have relevance to the Suppliers, the *Employer* and *Supplier* agree that the principles of the matters or dispute may be discussed at the Executive Management Board. The members of the Executive Management Board are set out in Schedule 13.

Entire Agreement Z26

Z26.1 This Framework Agreement and the documents referred to in it constitute the entire agreement and understanding of the *Employer* the *Supplier* and *Others* and supersede any previous agreement, whether written or oral, between the parties relating to the subject matter of this Framework Agreement.

Z26.2 Other than as expressly set out in this Framework Agreement as a warranty, each of the parties agrees that, in entering into this Framework Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (whether negligently or innocently made and whether or not made in connection with the terms of this Framework Agreement) of any person (whether party to this Framework Agreement or not).

Z26.3 The only remedy available to the Parties for breach of the warranties shall be for breach of contract under the terms of this Framework Agreement.

Z26.4 Notwithstanding clause Z26, nothing in this clause shall operate to limit or exclude any liability for fraud.

Financial Information and Audit Z27

Z27.1 Prior to and throughout the duration of the Framework Agreement, the *Employer* requires the *Supplier* to provide it with a copy of its annual accounts or equivalent upon request and shall operate open book arrangements in accordance with Schedule 9 paragraphs 3 to 6.

Z27.2 The *Supplier* shall provide the *Employer* with regular commercial records, reports, data and information on all Work Packages, Package Orders and Time Charge Orders delivered under this Framework Agreement in such a manner as to enable the *Employer* to carry out an effective financial audit of the Framework Agreement and all contracts entered into.

Z27.3 The *Supplier* shall keep and maintain until six (6) years after the end of any Work Package, Package Order or Time Charge Order, or as long a period as may be agreed between the Parties, full and accurate records of its goods and service supplied under it, all expenditure reimbursed by the *Employer*, and all payments made by the *Employer*. The *Supplier* shall on request afford the *Employer* such access to those records and processes as may be requested by the *Employer* in connection with the Framework Agreement, Work Package, Package Orders or Time Charge Orders.

Z27.4 The *Supplier* agrees to make available to the *Employer*, free of charge, whenever requested, copies of audit reports obtained by the *Supplier* in relation to the Framework Agreement, Work Packages, Package Order and/or Time Charge Orders.

Z27.5 The *Supplier* shall permit duly authorised representatives of the *Employer* and/or the National Audit Office to examine the *Supplier's* records and documents relating to the *Supplier* and to provide such copies and oral or written explanations as may reasonably be required.

Z27.6 The *Supplier* (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the *Employer* and for carrying out examinations into the economy, efficiency and effectiveness with

which the *Employer* has used its resources. The *Employer* shall provide such explanations as are reasonably required for these purposes

Supplier Development Z28

Z28.1 The *Employer* will operate and the *Supplier* will participate in the Supplier Development programmes described in Schedules 13 and 14.

No Assignment Z29

Z29.1 The *Supplier* may not assign the benefit of this Framework Agreement to a third party. The *Employer* may, without the consent of the *Supplier*, assign, transfer or otherwise dispose of this Framework Agreement to any successor body, the Crown or another contracting authority.

Prevention of Bribery and Corruption Z30

Z30.1 The *Supplier* warrants and represents that:

- (a) it has not committed any offence under the Bribery Act 2010 or done any of the following (referred to hereafter as "**Prohibited Acts**"):
 - i) offered, given or agreed to give any officer or employee of the *Employer* any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this or any other agreement with the *Employer* or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the *Employer*; or
 - ii) in connection with this Framework Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the *Employer*; and
 - iii) it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010

Z30.2 If the *Supplier*, Staff or agents (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the *Supplier* in relation to this Framework Agreement or any other agreement with the *Employer* the *Employer* shall be entitled:

- (a) to terminate this Agreement and recover from the *Supplier* the amount of any loss resulting from the termination;
- (b) to recover from the *Supplier* the amount or value of any gift, consideration or commission concerned; and
- (c) to recover from the *Supplier* any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence; and

Z30.3 Any termination under clause Z30.2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the *Employer*

Z30.4 The *Supplier* shall impose on any sub-contractors obligations substantially similar to those imposed on the *Supplier* by this Clause Z30

Z30.5 Notwithstanding clause Z25 (Dispute Resolution Procedure), any dispute relating to:

- (a) the interpretation of clauses Z30.1 and Z30.2; or
- (b) the amount or value of any gift, consideration or commission, shall be determined by the *Employer* and the decision shall be final and conclusive.

Equality and non-discrimination: Z31

Z31.1 The *Supplier* shall not:

- (a) engage in any prohibited conduct as defined in part 2 chapter 2 Equality Act in relation to any protected characteristic (as defined in section 4 Equality Act) where this would contravene any provisions of the Equality Act, including (without limitation) part 3 (goods and services) and part 5 (employment);
- (b) do (or omit to do) anything else that would amount to a contravention of the Equality Act including (without limitation) part 8 (prohibited conduct: ancillary) and chapter 3 part 5 (equality of terms).

Z31.2 The *Supplier* shall notify the *Employer* immediately of any investigation of or proceedings against the *Supplier*, whether under the Equality Act or any discrimination legislation which it replaces and repeals, and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

Z31.3 In addition to its obligations under this Clause Z31 relating to the Equality Act, the *Supplier* shall ensure that it complies with all other current employment legislation including, without limitation, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

Z31.4 The *Supplier* shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of any works or services provided under a Work Package, Package Order or Time Charge Order comply with their obligations under the Equality Act.

Z31.5 The *Supplier* shall impose on any sub-contractors and or agents obligations substantially similar to those imposed on the *Supplier* by this Clause Z31

Z31.6 The *Supplier* shall indemnify the *Employer* against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the *Employer* arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act due directly or indirectly to any act or

omission by the *Supplier*, its agents, employees or sub-contractors, or any breach of this clause Z31.

Survival Z32

Z32 The provisions of Clauses Z1, Z4, Z6, Z7, Z10, Z11, Z12, Z13, Z14, Z15, Z16, Z17, Z18, Z19, Z20, Z21, Z22, Z23, Z24, Z25, Z26, Z27, Z29, Z30, Z31, Z32, Z33, Z34, Z35, Z36, Z37, Z38, Z39, Z40, Z41, Z42, Z43, Z44, Z45, Z46 and Z27 shall survive termination of this Framework Agreement.

Knowledge Retention Z33

Z33.1 The *Supplier* shall co-operate fully with the *Employer* in order to enable an efficient and detailed knowledge transfer from the *Supplier* to the *Employer* on the completion or earlier termination of the Framework Agreement and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the *Supplier* shall provide the *Employer* free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the *Employer*. The *Supplier* shall comply with the *Employer's* request for information no later than two weeks from the date that that request was made

Precedence Z34

Z34.1 Where this Framework Agreement or any Schedule attached thereto conflicts with any provision in any Work Package, Package Order or Time Charge Order the terms of this Framework Agreement shall prevail.

Z34.2 The *Employer* acting reasonably shall resolve any ambiguity or inconsistency arising between this Framework Agreement and a Work Package, Package Order or Time Charge Order.

Variation Z35

Z35.1 No variation to this Framework Agreement shall be permitted without the express consent of the *Employer*, the *Supplier* and the *Suppliers*

Environmental Consideration Z36

Z36.1 The *Supplier* shall comply with the environmental considerations set out in Schedules 5 and 14.

Incentivisation Z37

Z37.1 The *Employer* may incentivise Programmes, and the incentivisation mechanism shall be in accordance with the provisions of Schedule 8.

Z37.2 The *Employer* may incentivise Work Package, Package Order and Time Charge Orders and the incentivisation mechanism shall be in accordance with the provisions of Schedule 8.

Project Cost Tool Z38

Z38.1 The *Supplier* shall cooperate with the *Employer* in developing the project cost tool described in Schedule 10 and shall provide the *Employer* with the assistance and information required in the form set out in Schedule 10 at its own cost.

No Guarantee of Work Z39

Z39.1 This Framework Agreement does not constitute a commitment to award any level of business and shall not be an exclusive arrangement between the *Employer* and the *Supplier* either as to the contracts entered into or as to the *Employer* being bound to offer call off contracts to the *Supplier* in preference to any of the *Suppliers* or other third parties.

Income Tax and National Insurance Contributions Z40

Z40.1 Where the *Supplier* and/or its Staff are liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

Z40.2 Where the *Supplier* and/or its Staff is liable to National Insurance Contributions in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

Z40.3 The *Employer* may, at any time during the term of this Framework Agreement, request the *Supplier* and/or its Staff to provide information which demonstrates how the *Supplier* and/or its Staff complies with clauses Z40.1 and Z40.2 above or why those Clauses do not apply to it.

Z40.4 A request under clause Z40.3 above may specify the information which the *Supplier* and/or its Staff must provide and the period within which that information must be provided.

Z40.5 The *Employer* may terminate this Framework Agreement if-

(a) in the case of a request mentioned in clause Z40.3 above-

(i) the *Supplier* and/or its Staff fails to provide information in response to the request within a reasonable time, or

(ii) the *Supplier* and/or its Staff provides information which is inadequate to demonstrate either how the *Supplier* and/or its Staff complies with clauses Z40.1 and Z40.2 above or why those clauses do not apply to it;

(b) in the case of a request mentioned in clause Z40.4 above, the *Supplier* and/or its Staff fails to provide the specified information within the specified period, or

(c) it receives information which demonstrates that, at any time when clauses Z40.1 and Z40.2 apply to the *Supplier* and/or its Staff, the *Supplier* and/or its Staff is not complying with those clauses.

Z40.6 The *Supplier* and/or its Staff may supply any information which it receives under clause Z40.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

Z40.7 The *Supplier* shall ensure that that this clause Z40 shall be repeated (and amended appropriately) in any contract between it and its Staff (but only insofar as it relates to work or services being undertaken pursuant to this Framework Agreement)

Payment Z41

Z41.1 The Parties shall comply with the payment provision set out in Schedule 9.

Mandatory Security and vetting procedures for Staff with access to the Employer's IT systems Z42

Z42.1 If in the performance of a Work Package , Package Order and/or Time Charge Order, the *Supplier's* Staff are to have access to the *Employers* IT systems, the Work Package Contract, Package Order and/or Time Charge Order will be subject to the following mandatory security and vetting procedure. This shall apply to all Work Package Contract, Package Order and/or Time Charge Order for secondment of staff

- a) **Verification of Identity** - The *Supplier* is responsible for verifying the identity of their staff prior to commencement of employment on the Work Package Contract, Package Order and/or Time Charge Order. This includes the verification, copying and checking of the appropriate documentation:
- Confirmation of name, date of birth and address
 - National Insurance number
 - Confirmation of qualification/licences
 - Confirmation of permission to work in the UK (if appropriate)

This information should be checked to ensure no obvious gaps exists and a copy kept on file.

- b) **Verification of Nationality and Immigration Status** - The *Supplier* is responsible for carrying out a physical check of appropriate documentation or (by exception) through an independent check of UK Border Agency (UKBA) records to ensure the individual has the right to remain in the UK and undertake the work in question. This needs to take place prior to commencement of employment.
- c) **Verification of Employment History** - The *Supplier* is responsible for verifying the candidates past 3 years employment history. Any unexplained gaps to be brought to attention of the *Employer's* line manager prior to commencement of employment.

- d) **Verification of Criminal Record (unspent convictions only)**- The *Supplier* is responsible for verifying unspent criminal records using Basic Criminal Record (CRB) check provided by Disclosure Scotland (DS) prior to the commencement of employment. This applies to the agency staff and the Staff.

Z42.2 In exceptional circumstances the *Employer* may decide to undertake a risk assessment where delays would impact on operation of business to allow individual to start on conditional employment contract whilst waiting for results of the check.

Z42.3 Individuals with evidence of valid and live CRB, Counter Terrorist Check (CTC), Security Check (SC) or Developed Vetting (DV) clearance will not be required to undertake Baseline Personnel Security Standard (BPSS) clearance again (except proof of identity).

Z42.4 The *Supplier* should keep a BPSS verification record of each individual employed on Work Package Contract, Package Order and/or Time Charge Order on the personal file. A standard form is provided by the Cabinet Office. Where individuals have valid and live clearance, this should be obtained in the form of the BPSS verification record from their previous organisation. There is no requirement to renew the BPSS once it has been approved. It is the responsibility of the *Supplier* to keep records for temporary agency employees and contractors. The *Employer* may audit the *Supplier* referencing and vetting processes throughout the contract.

Confidentiality Z43

Z43.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

Z43.2 Clause Z43.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause Z45.5 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement; or
- (e) it is independently developed without access to the other party's Confidential Information.

Z43.3 The *Supplier* may only disclose the *Employer's* Confidential Information to its Staff who are directly involved in the provision of the works or services pursuant to a Work Package, Package Order or Time Charge Order and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

Z43.4 The *Supplier* shall not, and shall procure that its Staff do not, use any of the *Employer's* Confidential Information received otherwise than for the purposes of this Framework Agreement.

Z43.5 At the written request of the *Employer*, the *Supplier* shall procure that those members of the Staff identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work under a Work Package, Package Order or Time Charge Order in accordance with this Framework Agreement.

Z43.6 Nothing in this Agreement shall prevent the *Employer* from disclosing the *Supplier's* Confidential Information:

- (a) to any Crown Body or any *Others*. All Crown Bodies or *Others* receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or *Others* on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or *Others*;
- (b) to any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review;
- (c) for the purpose of the examination and certification of the *Supplier's* accounts;
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

Z43.7 The *Employer* shall use all reasonable endeavours to ensure that any government department, *Others*, employee, third party or sub-contractor to whom the *Supplier's* Confidential Information is disclosed pursuant to clause Z43.6(b) is made aware of the *Employer's* obligations of confidentiality.

Z43.8 Nothing in this clause Z43 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Framework Agreement or any Work Package, Package Order or Time Charge Order in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights

Data Protection Z44

Z44.1 For the purposes of this Clause Z44.1, the terms "Data Controller", "Data Processor", "Data Subject" "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.

Z44.2 The *Supplier* shall (and shall procure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all of their obligations under the DPA which arise in connection with this Framework Agreement.

Z44.3 Notwithstanding the general obligation in Clause Z44.2, where the *Supplier* is Processing Personal Data as a Data Processor for the *Employer* the *Supplier* shall:-

- a) Process the Personal Data only in accordance with instructions from the *Employer* as set out in this Framework Agreement or as otherwise notified by the *Employer*;
- b) comply with all applicable laws;
- c) Process the Personal Data only to the extent, and in such manner as is necessary for the provision of the *Supplier's* obligations under the Framework Agreement;
- d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;
- e) take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;
- f) not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the *Employer*;
- g) not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the *Employer* or in compliance with a legal obligation imposed upon the *Employer*; and
- h) co-operate with the *Employer* to enable the *Employer* to comply with any request under section 7 of the DPA.
- i) notify the *Employer* within five Working Days if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the *Employer's* obligations under the DPA.

Z44.4 The provisions of this Clause Z44 shall apply during the term of this Framework Agreement and indefinitely after its expiry.

Freedom of Information Z45

Z45.1 The *Supplier* acknowledges that the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the *Employer* to enable the *Employer* to comply with its Information disclosure obligations.

Z45.2 The *Supplier* shall and shall procure that its sub-contractors and agents shall:

- (a) transfer to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- (b) provide the *Employer* with a copy of all Information in its possession, or power in the form that the *Employer* requires within five Working Days (or

- such other period as the *Employer* may specify) of the *Employer's* request; and
- (c) provide all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

Z45.3 The *Employer* shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

Z45.4 In no event shall the *Supplier* respond directly to a Request for Information unless expressly authorised to do so by the *Employer*.

Z45.5 The *Supplier* acknowledges that (notwithstanding the provisions of Clause Z45.2) the *Employer* may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the *Supplier* a Work Package, Package Order or a Time Charge Order:

- (a) in certain circumstances without consulting the *Supplier*; or
- (b) following consultation with the *Supplier* and having taken their views into account;
- (c) provided always that where Z45.2 applies the *Employer* shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the *Supplier* advanced notice, or failing that, to draw the disclosure to the *Supplier's* attention after any such disclosure.

Z45.6 The *Supplier* shall ensure that all Information is retained for disclosure and shall permit the *Employer* to inspect such records as requested from time to time.

Z45.7 The *Supplier* acknowledges that the *Employer* may be obliged to disclose its Commercially Sensitive Information

Logos and trademarks Z46

Z46.1 No Party shall itself or by a third party use or reproduce or otherwise deal with the logos distinctive marks or trademarks of another Party or cause or permit the same without the consent in writing of the Party to whom the logos, distinctive marks or trademarks belong.

Intellectual Property Rights Z47

Z47.1 Save as granted elsewhere under the Framework Agreement, neither the *Employer* nor the *Supplier* shall acquire any right, title or interest in the other's Pre-Existing IPR.

Z47.2 The *Supplier* shall not, and shall procure that the Staff shall not, (except when necessary for the performance of this Framework Agreement, Works Package, Package Order and/or a Time Charge Order) without prior written approval, use or disclose any *Employer* Pre-Existing IPR or the Project Specific IPRs to any third party.

Z47.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the *Employer*. The *Supplier* hereby assigns to the *Employer*, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.

Z47.4 The assignment under Clause Z47.3 shall either take effect on the date of the Framework Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.

Z47.5 The *Supplier* shall waive or procure a waiver of any moral rights in any copyright works assigned to the *Employer* under the Framework Agreement, Work Packages, Package Orders and Time Charge Orders.

Z47.6 If requested to do so by the *Employer*, the *Supplier* shall without charge to the *Employer* execute all documents and do all such further acts as the *Employer* may require to perfect the assignment under Clause Z47.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.

Z47.7 The *Employer* hereby grants to the *Supplier* a non-exclusive, revocable, non assignable licence to use the *Employer's* Pre-Existing IPR and the Project Specific IPRs for the duration of the relevant Work Package, Package Order or Time Charge Order for the sole purpose of enabling the *Supplier* to provide the works and/or services pursuant to the Work Package, Package Order or Time Charge Order.

Z47.8 The *Supplier* hereby grants to the *Employer* a non-exclusive, non-revocable, non assignable licence to use the *Supplier* Pre-Existing IPR and the Project Specific IPRs for the sole purpose and only for the duration of enabling the *Employer* to operate maintain improve and replace the works and/or services provided by the *Supplier* pursuant to the Work Package, Package Order or Time Charge Order

Z47.9 Prior to using any third party Intellectual Property Rights, the *Supplier* shall obtain the prior written approval of the *Employer*. The *Supplier* shall provide the *Employer* with details of any third party licence required by the *Supplier* and/or the *Employer* in order for the *Supplier* to carry out its obligations under a Work Package, Package Order or Time Charge Order using the third party Intellectual Property Rights. The *Employer* reserves the right to withhold its approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.

Z47.10 Where the *Supplier* is granted the approval by the *Employer* to use the third party rights, the *Supplier* shall procure that the owner of third party rights grants to the *Employer* a licence upon the terms informed to the *Employer* when seeking its approval.

Z47.11 The *Supplier* shall, during and after the term of this Framework Agreement, indemnify and keep indemnified and hold the *Employer* harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the *Employer* may suffer or incur as a result of any claim that the performance or non-performance by the *Supplier* of a Work Package, Package

Order, Time Charge Order and/or this Framework Agreement and/or the possession or use by the *Employer* of the Project Specific IPR infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-

- (a) items or materials based upon designs supplied by the *Employer*, or
- (b) the use of data supplied by the *Employer* which is not required to be verified by the *Supplier* under any provision of the Framework Agreement, Work Package, Package Order or Time Charge Order.

Z47.12 The *Employer* shall notify the *Supplier* in writing of the Claim and the *Employer* shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The *Supplier* shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the *Supplier*:-

- (a) shall consult the *Employer* on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the *Employer*, and
- (c) shall not settle or compromise the Claim without the *Employer's* prior written approval (not to be unreasonably withheld or delayed).

Z47.13 If a meritorious Claim is made in connection with the Framework Agreement, Work Package, Package Order and/or Time Charge Order or in the reasonable opinion of the *Supplier* is likely to be made, the *Supplier* shall immediately notify the *Employer* and, at its own expense and subject to the consent of the *Employer* (not to be unreasonably withheld or delayed), use its best endeavours to:-

- (a) modify the relevant part of the Framework Agreement, Work Package, Package Order or Time Charge Order without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
- (b) procure a licence to use and supply the services, works and/or the deliverables pursuant to the Framework Agreement, Package Order, Package Order and/or Time Charge Order, which are the subject of the alleged infringement, on terms which are acceptable to the *Employer*; or

and in the event that the *Supplier* is unable to comply with Clauses Z47.13(a) or (b) within 20 Working Days of receipt of the *Supplier's* notification the *Employer* may terminate the Framework Agreement, Package Order and/or Time Charge Order with immediate effect by notice in writing and the *Supplier* shall, upon demand, refund the

Employer with all monies paid in respect of the Framework Agreement, Package Order and/or Time Charge Order that is subject to the Claim.

Z47.14 Throughout the term of this Framework Agreement and any Work Package, Package Order or Time Charge Order:

- (a) The *Employer* shall record all the *Employer's* Pre-Existing IPR provided to the *Supplier* pursuant to this Framework Agreement, Work Package, Package Order and/or Time Charge Order in the format to be agreed by the parties and send the same to the *Supplier* on a monthly basis; and
- (b) The *Supplier* shall record all the *Supplier's* Pre-Existing IPR and Project Specific IPR used or created pursuant to this Framework Agreement, Work Package, Package Order and/or Time Charge Order in the format set out

Schedule 1

Scope of services provided under the Framework

1. The tables below outline the envisaged service provisions to be delivered in each Lot under the framework, as well as the typical skills/activities required for each service. Further information on the Lots is contained in the OJEU Contract Notice.

Lot 1 – Modelling, Mapping and Data Services

2. Suppliers within this Lot will deliver a range of Modelling, Mapping and Data Services associated with the activities of the Environment Agency.

Table 1 Lot 1 – Modelling, Mapping and Data Services

	Service Provision	Skill/Activity
1a	Modelling:	<ul style="list-style-type: none"> ▪ Hydrological modelling and analysis ▪ Coastal and fluvial and surface water hydraulic modelling (1D / 2D) ▪ Wave forecasting and overtopping analysis ▪ Coastal erosion, sewer network and groundwater modelling ▪ Whole system modelling ▪ Surveying - Gathering historic flood data, channel, bathymetric and topographic surveying ▪ Real time modelling (hydrological and hydraulic for flood forecasting) ▪ Derivation and application of associated rating curves
1b	Mapping:	<ul style="list-style-type: none"> ▪ Mapping of river & sea flooding ▪ Mapping of pluvial water / urban drainage
2a	Emergency Planning:	<ul style="list-style-type: none"> ▪ Flood forecasting and flood warning ▪ Reservoir dam breach analysis and inundation modelling / mapping ▪ Surface Water Management Plans ▪ Emergency response exercises ▪ Multi agency response plans
2b	Data:	<ul style="list-style-type: none"> ▪ Management of GIS ▪ Data management ▪ Strategies ▪ Strategy development (inland and coastal) ▪ Post Catchment Flood Management Plans (CFMP) studies ▪ Provision of local telemetry systems to at risk communities
3a	Other:	<ul style="list-style-type: none"> ▪ Policy / process development ▪ Technical compliance checks / assistance ▪ Quality assurance checks of flood risk assessments / flood consequence assessments ▪ Training

Lot 2 – Environmental Services

3. Suppliers within this Lot will deliver high quality environmental support to the *Employer* projects. The main focus for this Lot is twofold:
- a. To provide consultancy support to flood risk management and other capital projects where independent environmental consultancy is merited on account of significant socio-environmental risk, the magnitude of environmental improvement opportunities and the need for high environmental capability
 - b. To provide consultancy support for wider projects which have a significant socio-environmental component (for example river restoration design, Water Framework Directive compliance, habitat creation design, Habitats Directive compliance, fisheries and biodiversity orientated projects).

Table 2 Lot 2 – Environmental Services

	Service Provision	Skill/Activity
1a	Environmental Impact Assessment	<ul style="list-style-type: none"> • Environmental project management • Environmental assessment co-ordination • Environmental Impact Assessment (statutory) • Environmental assessment (non statutory) • Environmental risk management • Spatial environmental GIS mapping
1b	Strategic Environmental Assessment	<ul style="list-style-type: none"> • Strategic Environmental Assessment • Strategic appraisal • Spatial environmental GIS mapping
1c	Landscape Architecture Design	<ul style="list-style-type: none"> • Landscape appraisal, design, management & supervision • Visual impact assessment • Landscape character assessment • Constraint and opportunity mapping • Landscape architecture concept planning
1d	Heritage and Archaeological Management	<ul style="list-style-type: none"> • Heritage and archaeological assessment • Heritage risk management • Statutory and non statutory legislative and policy framework
1e	Town and Country Planning	<ul style="list-style-type: none"> • Development of the environmental element of planning applications • Local engagement with Planning Officers • Public and government inquiry expert witness
1f	Hydromorphology and Water Framework Directive	<ul style="list-style-type: none"> • Hydromorphological assessment and evaluation • Geomorphological survey and evaluation • Water Framework Directive assessment
1g	Habitat Creation and River Restoration	<ul style="list-style-type: none"> • Design of new habitat • Co-ordination of delivery of habitat creation • Design and delivery of river restoration

Service Provision		Skill/Activity
2a	Ecology Survey and Evaluation	<ul style="list-style-type: none"> • Ecological impact assessment • Ecological desk based studies • Ecological mitigation design and implementation • Ecological survey for key species
2b	Environmental Legislation	<ul style="list-style-type: none"> • Services in relation to UK and European environmental legislation (e.g. Habitats Regulations, Countryside and Rights of Way Act etc) • Habitats Regulations Assessment
2c	Environmental Partnership Funding	<ul style="list-style-type: none"> • Development of environmental partnerships • Sourcing and securing environmental partnership funding • Development of external funding business cases
2d	Environmental Economics and Ecosystem Appraisal	<ul style="list-style-type: none"> • Ecosystems services valuation • Environmental economic assessment and evaluation

Lot 3 – Engineering and related services

Suppliers within this Lot will deliver a range of Engineering, environmental and other consultancy services.

Table 3 Lot 3 – Engineering and related services

Service Provision		Skill/Activity
1a	Project appraisal and feasibility studies	<ul style="list-style-type: none"> ▪ Investigation of inland and coastal flood risk and erosion problems ▪ Development and modelling of options. ▪ Assessment of costs and benefits/economic analysis ▪ Assessment of environmental impacts and benefits ▪ Stakeholder engagement ▪ Strategic studies – larger scale investigations of catchments or coastal cells ▪ Production of business case
1b	Design:	<ul style="list-style-type: none"> ▪ Fluvial, coastal and tidal flood defences and impounding structures ▪ Coastal engineering and scour protection ▪ Pumping and control systems ▪ Land remediation ▪ Mechanical and electrical installations ▪ Navigation ▪ Works associated with water resources, fisheries, ecology, ▪ Landscaping and recreation

Service Provision		Skill/Activity
1c	Supervision, contract management and CDM	<ul style="list-style-type: none"> ▪ Supervision of construction works and mechanical and electrical installations ▪ ECC project management ▪ CDM coordination services
2a	Specialist engineering	<ul style="list-style-type: none"> ▪ Mechanical, Electrical, Instrumentation, Control and Automation (MEICA), including design of lock gates, flood gates, barriers, etc. ▪ Reservoir inspection by All Panel Reservoir Engineers ▪ Design activities relating to river restoration and 'soft' engineering solutions ▪ Advice on technical solutions and risk management ▪ Advice on decommissioning, restoration and land remediation
2b	Environmental Services	<ul style="list-style-type: none"> ▪ Environmental Impact Assessment (Statutory and non statutory) ▪ Strategic Environmental Assessment ▪ UK and European Environmental Legislation (Water Framework Directive, Habitats Regulations, Countryside and Rights of Way Act. Etc) ▪ Environmental risk management ▪ Environmental clerk of works ▪ Advice on town & country planning, heritage, landscape and ecology
2c	Survey	<ul style="list-style-type: none"> ▪ Land surveying ▪ Flood and coastal defence asset condition surveys ▪ Property level flood protection surveys
3a	Research and development;	<ul style="list-style-type: none"> ▪ Development of best practice guidance based on research outputs
3b	Economics and Funding	<ul style="list-style-type: none"> ▪ Advice on economics and partnership funding
3c	Communications and Partnerships	<ul style="list-style-type: none"> ▪ Advice on partnership working, community engagement and public relations ▪ Communications and public consultations
3c	Other services that could be required	<ul style="list-style-type: none"> ▪ Contaminated land investigations ▪ Site investigation ▪ Buried services surveys ▪ Water resources and groundwater services.

Lot 4 – Asset Delivery

4. Suppliers within this Lot will deliver a range of Engineering design and construction related activities.
5. As outlined in the *Employer's* "Engineering a Better Environment" Strategy we are aspiring to increasingly deliver work programmes through an integrated supply team with a single lead partner.

Table 4 Lot 4 – Asset Delivery

Service Provision		Skill/Activity
1a	Project appraisal and feasibility studies	<ul style="list-style-type: none"> ▪ Investigation of inland and coastal flood risk and erosion problems ▪ Development and modelling of options. ▪ Assessment of costs and benefits/economic analysis ▪ Assessment of environmental impacts and benefits ▪ Stakeholder engagement
1b	Design	<ul style="list-style-type: none"> ▪ Fluvial, coastal and tidal flood defences and impounding structures ▪ Coastal erosion and scour protection ▪ Pumping and control systems ▪ Land remediation ▪ Mechanical and electrical installations ▪ Works associated with water resources, fisheries, ecology, landscaping navigation and recreation
1c	Civil engineering construction works	<ul style="list-style-type: none"> ▪ Including flood defences, wave and scour protection, impounding and conveyance structures ▪ Works associated with water resources, fisheries, ecology, river restoration, habitat creation and recreation.
1d	Coastal works	<ul style="list-style-type: none"> ▪ Beach nourishment, dredging, coastal structures ▪ Working on or constructing coastal hard flood defences (for example constructed seawall defences and revetment works). ▪ Works in a marine environment (for example constructed an outfall, offshore breakwater or placement of rock armour).
1e	Early Supplier Engagement (ESE)	<ul style="list-style-type: none"> ▪ Advice on technical solutions, buildability, value engineering and risk management
1f	Supervision and contract management:	<ul style="list-style-type: none"> ▪ Supervision of construction works and mechanical and electrical installations ▪ ECC project management ▪ CDM coordination services
2a	Specialist engineering design	<ul style="list-style-type: none"> ▪ Relating to mechanical, electrical, instrumentation control and automation (MEICA) works ▪ Design activities relating to river restoration and 'soft' engineering solutions ▪ Advice on technical solutions and risk management ▪ Advice on decommissioning, restoration and land remediation

Service Provision		Skill/Activity
2b	Specialist construction activities	<ul style="list-style-type: none"> ▪ Relating to mechanical, electrical, instrumentation control and automation (MEICA) works ▪ Relating to river restoration and 'soft' engineering solutions ▪ Relating to landscape contracting works
2c	Environmental Services	<ul style="list-style-type: none"> ▪ Environmental Impact Assessment (Statutory and non statutory) ▪ Strategic Environmental Assessment ▪ UK and European Environmental Legislation (Water Framework Directive, Habitats Regulations, Countryside and Rights of Way Act. Etc) ▪ Environmental risk management ▪ Environmental clerk of works ▪ Advice on town & country planning, heritage, landscape and ecology
3a	Other:	<ul style="list-style-type: none"> ▪ Advice on economics, partnership funding, community engagement and public relations ▪ Communications and public consultations ▪ Project management including planning and delivery of programmes/packages of works, risk management and communication ▪ Provision of an incident response service for contracts or projects underway ▪ Provision of Operation and Maintenance solutions ▪ Provision of Design, Build, Maintain and Operate solutions ▪ Provision of Turnkey solutions

Schedule 2
Part 1 - ECC Non-Returnable Documents



Contract documents
NEC – ECC 3rd Ed.

Contract for:	Write title here Project No.: Contract No.:
----------------------	--

Short description of the work to be done (not more than about six lines)

Non-Returnable documents	Document summary and contents Contract data part one Works information Site information Contract schedules
---------------------------------	--

Environment Agency address
EA PM's address

Date:
Version:
Author:



Non Returnable documents
NEC – ECC 3rd Ed.

Section 1
Document summary and contents

Section 1 - Document summary and contents

Document summary			
	Section	Title	Description
Non-Returnable Documents	1	Document summary and contents	A guide to the documents and 'tendering' arrangements.
	2	Contract data part one	Data (supplied by the <i>Employer</i>) required by the conditions of contract specific to this contract.
	3	Works information	The specification and description of the works and constraints on how the <i>Contractor</i> is to provide the works.
	4	Site information	Information describing the site (and its surroundings)
	5	Contract schedules	Forms and other documents not required until after a contract is placed.
	6	Other documents	If required.
Returnable Documents	7	Document summary and contents list	A guide to the tender documents
	8	Information for contractors completing the contract document and the tender form	Tendering arrangements and the formal offer to carry out the work
	9	Contract data part two	Data (supplied by the <i>Contractor</i>) required by the conditions of contract specific to this contract.
	10	Pricing data	The <i>activity schedule</i> Option A and C. /The forecast of the total defined cost Option E [Delete one] Risk register The risk budget
	11	Tender schedules	Information required with the tender and the <i>Contractor's</i> technical offer. Includes certificates for completion and return with the tender.



Non-Returnable documents
NEC – ECC 3rd Ed.

Section 2
Contract data
Part one

1. General
2. The *Contractor's* main responsibilities
3. Time
4. Testing and Defects
5. Payment
6. Compensation events
7. Title
8. Risks and insurance
9. Termination
10. *Additional conditions of contract*



Contract data part one
Data provided by the *Employer*
NEC – ECC 3rd Ed.

Contract	Notes for Compilers
1. General	1. The Environment Agency,: <ul style="list-style-type: none"> • deletes any rows that are not required • completes empty fields remaining in left hand column and • deletes this whole right column and drags this line to right hand boundary before issuing as a tender.
<ul style="list-style-type: none"> • The conditions of contract are the core clauses and the clauses for the options set out below of the NEC3 Engineering and Construction Contract June 2005 (with amendments June 2006 and September 2011). <p>A: Priced contract with activity schedule</p> <p>C: Target contract with activity schedule</p> <p>E: Cost reimbursable contract</p>	<p>The following two main options will have been discussed at a procurement strategy meeting:</p> <p>A: Priced contract with activity schedule</p> <hr/> <p>C: Target contract with activity schedule</p> <hr/> <p>For emergency work use the following main option:</p> <p>E: Cost reimbursable contract</p>
<p>W2: Dispute resolution</p>	<p>Must be used to comply with 'Construction Act'</p>
<p>X2: Changes in the law</p>	<p>The <i>Employer</i> accepts this risk.</p>
<p>X5: Sectional completion</p>	<p>Option if it is essential to have some parts of the works completed before the whole of the <i>works</i>. Discuss with OCL.</p>
<p>X7: Delay damages</p>	<p>Option if want to ensure sectional completion complied with. Pre-calculate genuine loss, discuss with OCL</p>
<p>X13: Performance bond</p>	<p>For use when a suitable Parent Company Guarantee has not been provided under the Framework. Discuss with OCL.</p>
<p>X15: Limitation of <i>Contractor's</i> liability for design to reasonable skill and care</p>	<p>Option, but this places the risk for design solution working on the EA.</p>
<p>X16: Retention</p>	<p>Option but not generally used.</p>
<p>Y(UK) 2The Housing Grants Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development & Construction Act 2009</p>	<p>Must be used</p>
<p>Y(UK) 3The Contracts (Rights of Third Parties) Act 1999</p>	<p>Must be used</p>
<p>Z: Additional conditions of contract</p>	<p>For details see item 10 of this Contract Data</p>
<ul style="list-style-type: none"> • The works are 	<p>Describes the works.</p>

<ul style="list-style-type: none"> The <i>Employer</i> is Environment Agency 	Address of appropriate Environment Agency regional head office and state the EA Project Manager as contact
<ul style="list-style-type: none"> The <i>Project Manager</i> is: 	Name and address of ECC <i>Project Manager</i> Do not include delegates here.
<ul style="list-style-type: none"> The <i>Supervisor</i> is 	Name and address of <i>supervisor</i> if used
<ul style="list-style-type: none"> The <i>Adjudicator</i> is the person appointed by the <i>Adjudicator nominating body</i> The referring party pays the administrative charge made by the <i>Adjudicator nominating body</i>. 	
<ul style="list-style-type: none"> The Works Information is in Non-returnable documents, Section 3 	Says in what documents the WI is located.
<ul style="list-style-type: none"> The Site Information is in Non-returnable documents, Section 4 	Says in what documents the SI is located.
<ul style="list-style-type: none"> The <i>boundaries of the site</i> are . 	Either refers to a drawing or gives narrative description
<ul style="list-style-type: none"> The <i>language of this contract</i> is English. 	
<ul style="list-style-type: none"> The <i>law of this contract</i> is the law of England, subject to the jurisdiction of the courts of England and Wales. 	
<ul style="list-style-type: none"> The <i>period for reply</i> to a communication is 2 weeks. 	Normally this would be two weeks
<ul style="list-style-type: none"> The <i>Adjudicator nominating body</i> is the Institution of Civil Engineers, London. 	
<ul style="list-style-type: none"> The <i>tribunal</i> is litigation in the courts 	
<ul style="list-style-type: none"> The Risk Register will be the contract risk register, which includes <i>Contractor</i> risks. Changes to <i>Contractor's</i> risks are not the subject of Compensation Events. The Risk Register is contained in Returnable Documents, Section 10, Pricing Data. 	The contract risk register is a key management tool. It is managed by the ECC <i>Project Manager</i> and the <i>Contractor</i> . The identified risks - included in Returnable Documents, Section 10 Pricing data – are monitored and added to (for example by early warnings), during the course of the contract. The project risk register is a separate document and does not form part of this contract. It is

			maintained by the EA and includes all risks on the project not just those in the contract risk register. This is updated and managed by the EA Project Manager.
2. The Contractor's main responsibilities			
<ul style="list-style-type: none"> The Contractor prepares forecasts of Defined Cost for the works at intervals no longer than _____ weeks. 			To be included and completed if the target or cost reimbursable options C or E is used. The period is usually four weeks.
3. Time			
<ul style="list-style-type: none"> The starting date is 			
<ul style="list-style-type: none"> The access dates are 			
Part of the Site		Date	
1.			
2.			
3.			
<ul style="list-style-type: none"> The Contractor submits revised programmes at intervals no longer than _____ weeks. 			Period should not be more frequent than needed for good management. Four weeks is usual.
<ul style="list-style-type: none"> The completion date for the whole of the works is _____. 			EA Project Managers shall state the required completion date. Supplier to state if they can bring this date forward. Date to be amended prior to Contract Award.
<ul style="list-style-type: none"> The Employer is not willing to take over the works before the Completion Date. 			Optional clause
<ul style="list-style-type: none"> The completion date for each section of the works is 			To be included and completed if sectional completion option X5 is used
Section	Description	Completion date	
1.			
2.			
3.			
<ul style="list-style-type: none"> The key dates and conditions to be met are 			Key dates can impose risks on the Contractor in some circumstances and should only be used if really necessary.
condition to be met		key date	Use if a particular condition needs to be met for a third party to install plant.
1.			
2.			
3.			
<ul style="list-style-type: none"> The Contractor is to submit a first programme for acceptance within _____ weeks of the contract date. 			Option to be included and completed if there is no programme identified in part two of the contract data
4. Quality, testing and defects			

<ul style="list-style-type: none"> The <i>defects date</i> is _____ weeks after completion of the whole of the works. 	<p>As a rule-of-thumb normally acceptable periods are:</p> <ul style="list-style-type: none"> beach nourishment 0 weeks construct only 52 weeks design and build 104 weeks process plant 156 weeks or longer should be considered. landscaping 208 weeks 								
<ul style="list-style-type: none"> The <i>defect correction period</i> is _____ weeks except that <ul style="list-style-type: none"> The <i>defect correction period</i> for _____ is _____ weeks The <i>defect correction period</i> for _____ is _____ weeks The <i>defect correction period</i> for _____ is _____ weeks 	<p>The <i>defect correction period</i> is the period allowed for the <i>Contractor</i> to resolve a defect. Safety issue for public 24hours Waterways 24hours MEICA 7 days</p>								
<p>5. Payment</p>									
<ul style="list-style-type: none"> The <i>currency of this contract</i> is pound sterling (£) 	<p>Standard</p>								
<ul style="list-style-type: none"> The <i>assessment interval</i> is a month 	<p>Standard</p>								
<ul style="list-style-type: none"> The interest rate is 2% per annum above the Bank of England base rate. 	<p>Standard</p>								
<ul style="list-style-type: none"> Immediately upon the <i>Project Manager</i> certifying the payment, the <i>Contractor</i> raises a VAT invoice and submits it for payment to the <i>Employer</i>. The <i>Employer</i> will make payment within 14 days of the date of the invoice. 									
<ul style="list-style-type: none"> The <i>Contractor's share percentages and share ranges</i> are: <table border="0" style="margin-left: 20px;"> <tr> <td style="padding-right: 20px;"><i>Share range</i></td> <td><i>Contractor's share percentage</i></td> </tr> <tr> <td>Less than 85%</td> <td>0%</td> </tr> <tr> <td>From 85% to 115%</td> <td>50%</td> </tr> <tr> <td>Greater than 115%</td> <td>100%</td> </tr> </table> 	<i>Share range</i>	<i>Contractor's share percentage</i>	Less than 85%	0%	From 85% to 115%	50%	Greater than 115%	100%	<p>Option C projects only</p>
<i>Share range</i>	<i>Contractor's share percentage</i>								
Less than 85%	0%								
From 85% to 115%	50%								
Greater than 115%	100%								
<ul style="list-style-type: none"> The total of the Prices are: £ 	<p>Employer to insert for Project incentivised contracts (delete for Contract incentivised contracts as this is defined in Contract Data Part 2)</p>								
<ul style="list-style-type: none"> The <i>Employer</i> retained risks are: 	<p></p>								
<ol style="list-style-type: none"> <i>Employer's</i> risks as set down in Clause 80.1 of New Engineering Contract, Engineering and Construction Contract 3rd Ed as amended by Clause Z2. 									
<ol style="list-style-type: none"> Major flooding events (to be defined on a project by project basis). 									
<ol style="list-style-type: none"> Additional costs associated with a public enquiry. 									
<ol style="list-style-type: none"> Other exceptional risks 	<p>If exceptional risks are identified they should be specifically included here. If none delete</p>								
<ul style="list-style-type: none"> The <i>exchange rates</i>, are those published in the 'FT Guide 	<p>To be included and completed if</p>								

to World Currencies' published in the 'The Financial Times' on the day before the assessment date.	the target or cost reimbursable options C or E is used.
<ul style="list-style-type: none"> The <i>retention free amount</i> is . 	Option to be included and completed if the retention option X16 is used
<ul style="list-style-type: none"> The <i>retention percentage</i> is % 	
6. Compensation events	
<ul style="list-style-type: none"> The place where weather is to be recorded is . 	Nearest Met Office Weather Station to site, unless alternative is agreed in advance.
<ul style="list-style-type: none"> The <i>weather measurements</i> to be recorded for each calendar month are <ul style="list-style-type: none"> the cumulative rainfall (mm) the number of days with rainfall more than 5 mm the number of days with minimum air temperature less than 0 degrees Celsius the number of days with snow lying at hours GMT and these measurements: <ul style="list-style-type: none"> 	Snow lying at 09:00 is often applied. Other measurements may arise due to special conditions such as sea states, wind speed etc.
<ul style="list-style-type: none"> The weather measurements are supplied by . 	Name of body providing weather measurements.
<ul style="list-style-type: none"> The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded and which are available from . 	
<ul style="list-style-type: none"> Assumed values for the ten year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are: 	Only use if no recorded weather data is available
7. Title and confidentiality	
There is no contract data required under this heading	
8. Risks and insurance	
Public Liability The minimum limit of indemnity for insurance in respect of liability for loss 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 <i>Contractor</i>) caused by an activity in connection with this contract for any one event is £15,000,000	Confirmation that the required insurances are in place is provided by the <i>Contractor</i> on a framework wide basis.
Employers Liability The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract is not less than the amount required by law.	

<p>Contractor's All Risk The insurance against loss of or damage to the works, plant and materials is to include cover for plant and materials provided by the <i>Employer</i> for an amount of[].</p> <p>Professional Indemnity The <i>Contractor's</i> total liability to the employer for all matters arising under or connection with this design work under the contract, other than excluded matters, is limited to an aggregate of £5,000,000 per individual contract.</p>	<p>To be stated as '£nil,' unless the EA are providing plant or free issue of materials.</p>
<p>Contractor owned risks</p>	<p>State here any additional risks to be transferred to the <i>Contractor</i>.</p>
<p>9. Disputes and termination</p> <p>Subject first to the disputes resolution procedure of the Framework dispute resolution procedure</p>	<p>Contract dispute resolution process will not be invoked until the Framework dispute resolution has been exhausted.</p>
<p>10. Option Z: The additional conditions of contract are:</p>	<p>These are the only additional approved clauses. If you think something else is missing have you checked that it is not in (or should be in) Works Information?</p>
<p>Z1: Correctness of site information and other documents.</p> <p>Z1.1 Site information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the <i>Employer</i> but is not warranted correct. Clause 60.3 does not apply to such site information and the <i>Contractor</i> is responsible for checking the correctness of any such site information he relies on for the purpose of pricing for or providing the works.</p> <p>Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the <i>Employer</i> but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the <i>Contractor</i> is responsible for checking the correctness of any such information he relies on for the purpose of pricing for, or providing the works.</p>	<p>Often ground conditions information is available but its accuracy is not known. This clause is to place the onus on the <i>Contractor</i> to check on anything that is important to him.</p> <p>To avoid doubt a similar statement is made in respect of health and safety plans.</p> <p>Not for use with Options E or Z2</p>
<p>Z 2A: Risk transfer: Physical conditions within the site</p> <p>Clause 60.1 (12) is deleted from this contract</p>	<p>This deletion clause may be used to place the risk of encountering physical conditions (as described in 60.1(12)) onto the <i>Contractor</i> particularly if a risk transfer has been priced. Do not use as a matter of course.</p> <p>Not for use with Options E, Z1 or Z2B.</p>
<p>Z 2B: Water levels: Contractor's risk</p> <p>Clause 60.1 (12) second bullet point is amended to: "are not weather conditions or floods and"</p>	<p>Use (particularly in respect of work in the sea or water flows) if we intend the contractor to stand the risk of ALL water levels or floods.</p> <p>Not for use with option Z2A or additional compensation event 60.1 (20) : 'Floods'</p>

<p>Z 2C: Additional compensation events These are compensation events:</p>	
<ul style="list-style-type: none"> • 60.1 (20) The working areas are flooded 	<p>Use if the <i>Employer</i> is to stand the risk of floods. It is essential to clearly define</p> <ul style="list-style-type: none"> • the source of the water (river, tidal but not – usually- local drainage) and • the magnitude of the flood by flow volume, height or other criteria which can readily be measured on site. <p>Do not use with additional condition of contract Z2B: ‘Water levels: <i>Contractors risk</i>’</p>
<ul style="list-style-type: none"> • 60.1 (21) 	<p>Only complete and include if there are other additional compensation events.</p>
<p>Z 2D: Additional compensation events There is no Compensation event for an instruction to stop work to remedy a breach of safety requirements, or additional work to comply with safety requirements.</p>	<p>For use on ALL contracts</p>
<p>Z3: Prevention: No change to prices Delete first sentence of clause 62.2 and replace with: “Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the <i>Contractor</i>. Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the <i>Contractor</i>.” Delete ‘The’ At start of clause 63.1 and replace with: “For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the.....”</p>	<p>Use with all options If a ‘force majeure’ event occurs the <i>Contractor</i> is entitled to an extension of time but not additional cost.</p>
<p>Z4: Schedule of Cost Components The specific amounts payable in relation to people are set out in the WEMF Lot4 Price Workbook and no other costs in relation to people will be payable. The cost of people who are not included in the WEMF Lot4 Price Workbook is not included in the defined cost. In the Schedule of Cost Components, Component 13 (i) and (n) the costs of employer’s liability insurance and motor insurance are excluded. These costs are included in the fee. In the Schedule of Cost Components, Component 44, overhead cost in working areas Replace the whole of the first paragraph with: “Overhead costs incurred within the working areas for provision and use of equipment, supplies and services, but excluding accommodation, for”.</p>	<p>For a long term framework with unknown site conditions it is impracticable to estimate a</p>

<p>The Framework Agreement does not specifically instruct the <i>Contractor</i> to take out insurance in relation to loss of or damage to equipment, but any such loss will be deducted as set down in the Schedule of Cost Components.</p> <p>Shorter Schedule of Cost Components – NOT USED</p> <p>Any reference in this contract to the shorter schedule of cost components is taken to be a reference to the Schedule of Cost Components with the omission of the first sentence of the Schedule of Cost Components.</p>	<p>framework wide Working Area overhead and to avoid the difficulty the cost component 44 is paid as cost</p> <p>WEM does not use the Shorter Schedule of Cost Components.</p>
<p>Z5: Delay damages</p> <p>The <i>Employer</i> does not seek delay damages from the <i>Contractor</i> if Completion or the date on which the <i>Employer</i> takes over the <i>works</i> is later than the Completion Date.</p>	<p>Optional clause – discuss with OCL prior to including. Consider conflict with use of X7.</p>
<p>Z6: Payment: Price for Work Done to Date</p> <p>Delete existing clause 11.2 (29) and replace with:</p> <p>“11.2 (29) The Price for Work Done to Date is the total Defined Cost which the <i>Project Manager</i> forecasts will have been paid by the <i>Contractor</i> before the next assessment date plus the Fee, not exceeding the forecast provided under clause 20.4 and accepted by the <i>Employer</i>.”</p>	<p>For use with Options C and E.,</p> <p>Prevents payment due to the <i>Contractor</i> exceeding accepted forecast</p>
<p>Z7: Share on termination</p> <p>Delete existing clause 93.4 and replace with:</p> <p>93.4 In the event of termination, there is no <i>Contractor’s</i> share</p>	<p>Must be used if Option C is selected.</p>
<p>Z8: Risks and insurance</p> <p>In fifth main bullet of clause 80.1 first line, delete word “Equipment,”</p>	
<p>Z9: Risks and insurance</p> <p>Replace clause 85.1 with the following</p> <p>Insurance certificates are to be submitted to the <i>Employer</i> on an annual basis.</p>	
<p>Z10: Payments to sub contractors, sub consultants and suppliers</p> <p>Subcontractors</p> <p>The <i>Contractor</i> will use the NEC3 Subcontract on all subcontracts for <i>works</i> and the NEC3 PSC on all subcontracts for services where it is practicable to do so. Payment to sub contractors will be 28 days from the assessment date. Where the NEC3 Sub contract is not used, payment to sub contractors and suppliers will be no more than 30 days from receipt of invoice.</p> <p>If the <i>Contractor</i> does not achieve payments within these time scales then the <i>Employer</i> reserves the right to delay payments to the <i>Contractor</i> in respect of sub contracted work and supplies. Failure to pay sub contractors, sub consultants and suppliers within agreed times scales will also adversely affect the <i>Contractor’s</i></p>	<p>Use on all contracts. It is essential the <i>Contractor</i> pays all sub contractors and suppliers promptly.</p>

<p>opportunities to work on framework contracts.</p>	
<p>Z11: Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999</p> <p>The design consultant employed by the <i>Contractor</i> is required to fulfil the obligations of the warrantor under the primary contract for design works that they complete. This includes:</p> <p>Transfer of rights clause Z14 Professional indemnity insurance cover to same cover as that specified for the <i>Contractor</i></p> <p>Z14.1 The <i>Employer</i> ('the third party') may in its own right enforce the provisions of this clause, subject to and in accordance with the provisions of the Contracts (Right of Third Parties) Act 1999 and the following provisions:</p> <p>Z14.1.1 the parties may not rescind or vary any provision(s) of this agreement, including this clause, at any time without the consent of the third party; and</p> <p>Z14.1.2 each third party's rights against party A under this agreement shall be subject to the same conditions, limitations and exclusions as apply to party B's rights against party A under this agreement.</p> <p>Z14.2 Except as provided in clause Z1.1, this agreement does not create any right enforceable by any person who is not a party to it (Other Party') under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a other party which exists or is available apart from that Act.</p>	<p>For design and build contracts unless a collateral warranty is required</p> <p>The Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999 will be the <i>Employer's</i> default for design and build contracts for establishing a link between the <i>Employer</i> and the design sub consultant when a collateral warranty is not used. Please note that collateral warranties should only be used in exceptional circumstances, see Option Z12: Collateral warranty for design and build contract</p> <p>Not for use with Z12.</p>
<p>Option Z 12: Collateral warranty agreement</p> <p>The <i>Contractor</i> shall within 7 working days of the <i>Employer's</i> request so to do execute, the Collateral Warranty in the form annexed hereto as Annex X, and deliver the same to the <i>Employer</i>.</p>	<p>Use on design and build contracts if the Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999 is not being used for establishing rights for the <i>Employer</i>. Also to be used, where appropriate on projects funded by a third party.</p> <p>Note to EA and Contractors: the use of collateral warranties on design and build projects will be in exceptional circumstances and must be agreed with the ncpms Commercial Programming Manager and Senior Procurement Manager. It is expected that the provisions of the Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999, see Option Z11, will be sufficient for the majority of the design and build projects undertaken using EA framework contractors and framework</p>

	<p>consultants, who are acting as the contractor's designer</p> <p>Not for use with Z11.</p>
<p>Option Z13: Payment on termination of design and build contracts</p> <p>Delete existing clause 93.2 A4 and replace with:</p> <p>93.2 A4 The direct fee percentage applied to</p> <ul style="list-style-type: none"> for Options A and C, any excess of the proportion of the total of the prices for the design element at the contract date over the price for work done to date for the design element or for Option E, any excess of the of the proportion of the first forecast of the defined cost for the design element for the works over the price for work done to date for the design element less the fee 	<p>For use on design and build contracts only</p> <p>Until commencement of construction at site, the Contractor will only recover the loss of overhead and profit (fee) on any loss of earnings in the design development phase. On commencement of construction, in the event of termination, the recovery of the fee is applied to the outstanding value of the construction works as per the current provision within the NEC3 contract.</p> <p>In the event of termination all design work will become the property of the <i>Employer</i></p>
<p>Option Z14: Transfer of rights</p> <p>Z14.1 The <i>Employer</i> owns the <i>Contractor's</i> rights over material prepared for this contract by the <i>Contractor</i> except as stated otherwise in the Works Information. The <i>Contractor</i> obtains other rights for the <i>Employer</i> as stated in the Works Information and obtains from a subcontractor/consultant equivalent rights for the <i>Employer</i> over the material prepared by the subcontractor. The <i>Contractor</i> provides to the <i>Employer</i> the documents which transfer these rights to the <i>Employer</i>.</p> <p>Z14.2 No use may be made by the <i>Contractor</i> of any material prepared for this contract by them, for purposes other than those stated in the Works Information without the <i>Employer's</i> prior agreement."</p>	<p>For use on design and build contracts only</p>
<p>Z15: Project Bank Account</p> <p>See Schedule 20 for appropriate Z clause and other documentation</p>	<p>For use on Projects using Project Bank Accounts</p>
<p>Z 16 Disallowed Costs</p> <p>Add the following bullet to clause 11.2 (25) Disallowed costs</p> <ul style="list-style-type: none"> was incurred due to a breach of safety requirements, or due additional work to comply with safety requirements. 	<p>For use on ALL Option C & E contracts.</p>
<p>Z17 Defined Costs</p> <p>Add clause 52.4</p> <p>If the Contractor subcontracts any part of the works to an Associated Company, the Defined Cost of the work subcontracted is assessed in accordance with the Schedule of Cost Components as if the work had not been subcontracted unless otherwise agreed by the Project Manager.</p>	

<p>Z 18 Programme Incentivisation</p> <p>53.4 The <i>Project Manager</i> makes a final assessment of the the <i>Contractor's share</i>, using the final price for Work Done to Date and the final total of the Prices. In accordance with Schedule 8, only one third of the <i>Contractor's share</i> will be certified by the <i>Project Manager</i>. The remainder of the gainshare will be dealt with as set out in Framework Schedule 8 clause 10</p>	<p>Include this clause only for Programme incentivised contracts. Seek guidance from your OCL.</p>
<p>Z19: Contractor's Share</p> <p>Delete existing clause 53.3 and replace with:</p> <p>53.3 The <i>Project Manager</i> shall regularly assess during the <i>works</i> the difference between the Price for Work Done to Date against the total of the Prices. If the <i>Project Manager</i> assess that the Price for Work Done to Date is greater than the top <i>share range</i> in the Contract Data Part 1 (115% of the total of the Prices) then the <i>Project Manager</i> shall be entitled to take the <i>Contractor's share percentage</i> into account when assessing amounts in clause 50 due for payment at each assessment date thereafter and shall not pay any amount greater than the <i>top share range</i> in the Contract Data Part 1 (115% of the total of the Prices). For avoidance of doubt, this shall only apply when the <i>Contractor</i> reaches the top <i>share range</i> and the <i>Project Manager</i> shall follow the procedure in clause 53.4 and clause 53.5 in assessing the other <i>share ranges</i>.</p> <p>Delete existing clause 53.4 and replace with:</p> <p>53.4 If clause 53.3 does not occur during the <i>works</i>, the <i>Project Manager</i> makes a preliminary assessment of the the <i>Contractor's share</i> at Completion of the whole of the <i>works</i> using his forecasts of the final Price for Work Done to Date and the final total of Prices. This share is included in the amount due following Completion of the whole of the <i>works</i>.</p> <p>Insert the following new clause 53.5:</p> <p>53.5 If clause 53.3 does not occur during the <i>works</i>, the <i>Project Manager</i> makes a final assessment of the the <i>Contractor's share</i>, using the final price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.</p>	<p>Option C projects only (where Z18 is not used)</p>



Non-returnable documents
NEC – ECC 3rd Ed.

Section 3
Works
information

This Works Information should be read in conjunction with the version of the Environment Agency Minimum Technical Standards current at the contract date. In the event of conflict between this Works Information shall prevail. The *works* are to be compliant with the version of the Works Information

Contents List

- WI 100 Description of the *works***
- WI 200 General constraints on how the *Contractor* Provides the Works**
- WI 300 *Contractor's* design**
- WI 400 Completion**
- WI 500 Programme**
- WI 600 Quality Management**
- WI 700 Tests and inspections**
- WI 800 Management of the *works***
- WI 900 Working with the *Employer* and Others**
- WI 1000 Services and other things to be provided**
- WI 1100 Health and Safety**
- WI 1200 Subcontracting**
- WI 1300 Title**
- WI 1400 Acceptance or procurement procedure (Options C and E)**
- WI 1500 Accounts and records (Options C and E)**
- WI 1600 Parent Company Guarantee (Option X4)**
- WI 1700 *Employer's* work specifications and drawings**

WI 100 Description of the works

Provide a general description of the work to be carried out under the contract. It is unnecessary to repeat the definition of the *works*.

The general description should be consistent with the description in the Contract Data Part one, and identify the outline scope of the works to be provided. A general description of the *Contractor's* design responsibility may be included here. The detailed description will be in section WI 300.

The *Employer's* overall objectives for the project may also be stated, so that the *Contractor* understands them and can work with the *Employer* to achieve them.

A description of the works to be undertaken by the *Employer* or others is in section WI 900

WI 101 Description of the works

The drawings describing the *works* are included in Appendix x

The baseline setting out information is on drawing x. The *Contractor* will establish these lines on site and confirm the position with the *Supervisor* before commencement of any construction works. The *Contractor* shall check the provision of any level reference points shown on the drawings and confirm the position and level with the *Supervisor* before use for setting out the *works*. The *Contractor* shall inform the *Project Manager* when all setting out reference points have been agreed, checked and confirmed.

WI 102 Project objectives

WI 200 General constraints on how the Contractor Provides the Works

State any general constraints on how the *Contractor Provides the Works*, which are now covered by other Works Information sections

If project objectives are included, state the requirements imposed on the Contractor in helping to achieve them.

Constraints may include the checklist topics listed below. Constraints are restrictions on how the *Contractor Provides the Works*, not issues related to cash flow, funding or other requirements which conflict with the *conditions of contract*.

WI 201 General constraints

Examples of constraints are

- Use of the Site
- Access to the Site
- Deliverables
- Noise and Variations
- Working hours
- Parking
- Use of cranes
- Use (or non –use) of explosives
- Restrictions on the use of hazardous materials
- Storage of fuel and chemicals
- Pollution, ecological and environmental impacts.
- Archeological requirements
- Interfaces between the *works* and existing things.
- Occupied premises and users.
- *Employer* specified policies and procedures.
- Constraints imposed to meet the requirements of Others (example finders).
- Tide Information

WI 202 Confidentiality

The *Contractor* does not disclose information in connection with the *works* except when necessary to carry out their duties under the contract or their obligations under the contract

The *Contractor* may publicise the *services* only with the *Employer's* written agreement.

WI 203 Security and protection on the Site

State any security requirements for the Site and protection of the public.

WI 204 Security and identification of people

State any security, vetting and identification of people working on or visiting the Site.

WI 205 Protection of existing structures and services

State any specific requirements for the protection of existing structures, services, mains, trees and other plants. Requirements for maintenance of existing services. Procedures for working on existing structures and services.

Refer to the Site Information for the location of existing things to be protected or procedures for identifying them.

WI 206 Protection of the works

State any specific requirements for the protection of the *works* against damage.

WI 207 Cleanliness of the roads

State any requirements agreed with authorities for protecting and cleaning of access roads to the Site.

WI 208 Traffic Management

State any requirements and procedures for the management of traffic, road closures and public highways. Communication and information requirements.

WI 209 Condition survey

State condition surveys that need to be carried out by the *Contractor* and any associated reinstatement works.

WI 2010 Consideration of Others

State restrictions on work to avoid disturbance to the general public and occupiers of adjacent premises.

WI 2011 Control of site personnel

State any specific requirements for control of people working on or visiting the Site.

Permits and licences (for example permits to work), and particular format required.

WI 2012 Site cleanliness**WI 2013 Waste materials**

Removal of waste and restrictions on the disposal of waste material. Are there any requirements for recycling.

WI 2014 Deleterious and hazardous materials

Restrictions on the use of deleterious and hazardous material

WI 300 Contractor's design

Define the parts of the *works* which the *Contractor* is to design. The ECC is flexible in this respect. The responsibility for design can be described in a number of different ways, but in all cases, the part to be designed by the *Contractor* must be clearly identified. If the *Employer* carries out most of the design, a list of items designed by the *Contractor* may be stated. If the *contractor* carries out most of the design, a list of items to be designed by the *Employer* may be stated.

State the procedures which the *Contractor* is to follow in carrying out his design and procedures for the submission of the design for acceptance by the *Project Manager* and Others. Identify which parts of the design are required to be submitted to the *Project Manager* for acceptance.

Unless you restrict the design liability in the conditions of contract the design liability of the *Contractor* is fit for purpose

WI 301 Design responsibility

Clause 21.1 As above

WI 302 Design submission procedures

Clause 21.2 As above

WI 303 Design approval from Others

Clause 27.1 State any requirements for design checks and approval by Others.

WI 304 Employer's requirements

Identify the *Employer's* requirements for the parts of the *works* to be designed by the *Contractor*. Examples of this information are listed below:

- Specifications, including reference to relevant standards.
- Design standards and codes of practice.
- Size and/or space limitations.
- Loading and capacity requirements
- Operational performance requirements and design life.
- Planning drawings and planning consents.
- Energy consumption targets
- Environmental standards
- Sustainability requirements
- Design quality evaluation criteria
- *Employer's* design reports
- *Employer's* standard design guidance.

WI 305 Design co-ordination

State what responsibility the *Contractor* has for co-ordination with Others in preparing his design and any responsibility for the co-ordination of design by Others.

WI 306 Requirements of Others

Explain the *Contractor's* responsibility for obtaining and satisfying any necessary authority requirements (for example planning officials or government departments).

WI 307 Copyright/licence

Clause 22.1 State any purpose for which the *Employer* may wish to use and copy the *Contractor's* design if it is not stated in subclause 22.1.

WI 308 Access to information following Completion

State the *Employer's* requirements for access to information once the Defects certificate is issued including the timescale for the retention of any information after Completion. Consider any need for computer software source code for example

WI 400 Completion**WI 401 Completion definition**

The following are absolute requirement for Completion to be awarded. 2 copies of Health and Safety File and 2 copies of Operating and Maintenance Manuals. Population of the Employer's latest version of the Project Cost Tool, or its successor, is an absolute requirement of Completion.

Clause 11.2(2) Work to be done by the Completion Date.

WI 402 Sectional Completion definition

Option X5, X5.1 Work to be done for each Sectional Completion.

WI 403 Training

Training required for the *Employer* or Others and associated timescales.

WI 404 Final Clean

Details of final clean, removal of temporary structures, materials, protection and tools.

WI 405 Security

Details of security arrangements and handover at Completion.

WI 406 Correcting Defects

Procedures for access for the correction of any Defects and process for liaison with the *Project Manager* and *Employer*.

WI 407 Pre-Completion arrangements

Requirements for preparing for take over.

WI 408 Take over

Identify parts of the *works* that the *Employer* requires to use prior to Completion without taking it over. Details to include

- Location of parts of the *works* and
- reasons for use.

Contractor's access provision during periods of use.

WI 500 Programme

State any information additional to the requirements of the subclause 31.2 that the *Contractor* is to include in the programme. This may include dates for the submission of designs and samples, dates for information or actions by the *Employer* and *Project Manager*, and the timing of any test and inspection.

Any requirements for the format and content of the programme should be stated, including the use of specific software (if necessary) and the requirement for hard and electronic copies.

WI 501 Programme requirements

Clause 31.2

WI 502 Programme arrangement

Any specific arrangement of the programme, including any requirement for the programme to be produced in levels (summary levels to detail level).

WI 503 Methodology statement

Particular requirements for methodology statements, including any specific requirements for resource information.

WI 504 Work of the *Employer* and Others

The order and timing of the work of the *Employer* and Others to be included in the programme and information to be provided. Refer as necessary to sections WI 901 and WI 902.

WI 505 Information required

A schedule of information to be provided, who it is to be provided by, and the date by which it is to be provided.

WI 506 Revised programme

Any specific requirements for the submission of revised programmes, such as an explanation of changes.

WI 600 Quality management

Detail the requirements for quality control and management.

WI 601 Samples

State the materials and samples required including any procedures for submission and acceptance.

WI 602 Quality Statement

State any requirement for a quality statement from the *Contractor*.

WI 603 Quality management system

State any requirements for a quality management system, including accreditations or legislative standards other than those already covered in Schedule 15 of the Framework Agreement.

WI 700 Tests and inspections

Detail the tests and inspections required which parties are involved in the test and inspection process. Tests and inspections may also be detailed within the work specifications. Ensure consistency of drafting between this section and the contents of WI 1700.

Tests and inspections might be required for

- Samples of plant or materials provided by the *Contractor*
- Samples of workmanship
- Equipment, Plant and Materials outside the Working Areas before payment or delivery.
- Work in the Working Areas.
- Plant and Materials, and work prior to Completion (see WI 400).
- Plant and Materials, and work after take over but before the *Defects date*.
- System tests
- Computer software tests.
- Performance tests.

State the materials, facilities and samples to be provided by the *Contractor* and the *Employer* for tests and inspections, and the timing of these.

State the Plant and Materials which are to be tested and inspected before delivery to the Working Areas, including details of the test or inspection.

Any test or inspection of the Equipment, Plant and Materials outside the Working Areas which have to be passed by the Supervisor for payment should also be stated.

State any requirements for commissioning or performance tests in this section, in the same way that other tests and inspections are described.

WI 701 Tests and inspections

Clause 40.1, 40.2, 41.1 and 60.1 (16) Consider the following checklist for test and inspection details.

- Objective, procedure and standards to be used,
- When they are to be done,
- Where they are to be done,
- Who does the tests, and who is in attendance,
- Testing and inspection method,
- The Equipment required and who provides it,
- Access arrangements,
- Information or instructions required to be provided,
- Materials, facilities and samples to be provided,
- Involvement of specialists,
- Acceptable results and deviations,
- Test environment,
- Documents to be provided before and after the test,
- Whether or not authorisation to proceed to the next stage of the work depends on the test results.

WI 702 Management of tests and inspections

Consider the requirement for a test and inspection schedule, containing all relevant information. State procedures for submission and review.

WI 703 Covering up completed work

State timescales for the covering up of works which have been tested.

WI 704 *Supervisor's procedures for inspections and watching tests*

State any inspection procedures required by the *Supervisor*.

WI 800 Management of the works

The Contract Data identifies the *Employer, Project Manager, Supervisor and Contractor* and states what each is required to do. It is important, in using this section, not to contradict these obligations and duties. If any of their duties are delegated to Others, the extent of the delegation should be set out.

The ECC establishes a procedural framework based on good project management practice. It may be helpful to detail the communication procedures required to support this.

This may include a framework of regular meetings, attendees required and outputs. Explain how people will be involved in the management of the *works* and how communications are to be managed. Consider the use of a chart setting out the roles and responsibilities of the various parties involved.

Other than those set out in Schedule 15 of the Framework Agreement, state whether an internet based collaboration tool or other electronic communication system is to be used

WI 801 Project team – Others

As above

WI 802 Communications

State any communication procedures which the *Contractor* is required to follow other than those already set out in Schedule 15 of the Framework Agreement. Consider the following

- Meetings, attendees and meeting records,
- Reporting requirements (eg progress reports),
- Information requirements,
- Electronic systems and communications,
- Use of standard forms and templates,
- Terminology and abbreviations.

WI 900 Working with the *Employer* and Others

Detail the activities of Others within the Working Areas.

The *Contractor* is required to co-operate with Others in obtaining and providing information which they need in connection with the *works*. State any requirements that have been agreed with the Others.

WI 901 Sharing the Working Areas with the *Employer* and Others

Clauses 25.1 and 60.1(5) Provide a list of activities to be undertaken, explaining the following:

- What is being done,
- Who is doing it,
- When it is being done, and for how long,
- Where is it being done,
- How the *Contractor* is to co-operate and share the Working Areas.

WI 902 Co-operation

Identify known information requirements, for the *Contractor* to obtain from Others or to provide to Others, and timing.

WI 903 Co-ordination

State how the *Contractor* is to liaise with the *Employer* and Others for the co-ordination of works and access.

WI 904 Authorities and utilities providers

Identify works to be carried out by the authorities and utilities providers. State the responsibility for enquiry, management, procurement and provision of notices and payment.

WI 1000 Services and other things to be provided

State the services and other things that are to be provided by the *Employer* for use by the *Contractor*, and by the *Contractor* for the use by the *Employer*, *Project Manager* and *Others*. Identify who they are provided for. It is not necessary to list things that the *Contractor* requires for his own use to Provide the Works.

WI 1001 Services and other things for the use of the *Employer*, *Project Manager* or *Others* to be provided by the *Contractor*

Clause 25.2 May include the following:

- Accommodation,
- Meeting rooms,
- Storage facilities,
- Catering,
- Medical facilities and first aid,
- Recreation,
- Sanitation,
- Security,
- Copying,
- Telephone, fax, radio and CCTV,
- Computer equipment and services,
- Sign boards and other signage,
- Safety equipment and services,
- Fences, screens and hoardings,
- Postage,
- Maintenance of access roads,
- Temporary facilities,
- Utilities, eg. water and power,
- Meter readings

WI 1002 Services and other things to be provided by the *Employer*

Same checklist as above. Consider the following also.

- Access to the Site,
- Space for the accommodation,
- Plant and materials

WI 1100 Health and Safety

State any health and safety requirements for the project which the *Contractor* must follow, in addition to the requirements of the law.

Consider whether health and safety information should be included in the Works information or the Site Information.

WI 1101 Health and safety requirements

Clause 27.4 Details of any additional health and safety requirements for the project, all of which may include the following.

- *Employer's* safety requirements,
- *Reporting requirements*,
- Safety management, supervision and qualification,
- Management of Subcontractors,
- Drug and alcohol policy
- Site induction procedures

WI 1102 Method statements

Detail the operations for which the *Contractor* is required to submit method statements and risk assessments to the *Project Manager* for acceptance.

WI 1103 Legal requirements

If any health and safety duties are required by law, state who will perform them.

WI 1104 Inspections

State and requirement for review and inspection of Contractor's health and safety procedures by the Project Manager.

WI 1200 Subcontracting

The *Contractor* may subcontract work using an NEC contract. Any restrictions on the *Contractor* subcontracting work need to be set out.

The ECC does not provide for nomination of subcontractors, for the reasons set out in the NEC ECC Guidance Notes. It can be achieved by making the *Contractor* responsible for all of the work, he may then subcontract parts and the *Project Manager* retains some control over the identity of the Subcontractors using ECC clause 26.

WI 1201 Restrictions or requirements for subcontracting

State any restrictions and additional procedures which the *Contractor* must follow.

WI 1202 Acceptance procedures

Clauses 26.3 and 11.2(25) (Options C and E) State any specific submission and acceptance procedures for the proposed subcontracts not based upon the NEC contract. The basic requirement for submission and acceptance is dealt with in subclause 26.3

WI 1300 Title

State the requirements for marking Equipment, Plant and Materials which are outside the Working Areas by the *Supervisor*, for payment and transfer of title to the *Employer*. The Works Information should state which items are to be prepared for marking, and how this is to be done. Identify any tests which must be passed before items are accepted for marking.

The Works Information should state which materials arising from excavation and demolitions the *Contractor* has title to.

WI 1301 Marking

As above.

WI 1302 Materials from excavation and demolition

Clause 73.2 Decide the title of materials from excavation and demolition. State whether the Employer wishes to salvage any such materials, and if so where they are to be delivered or collected from, and by whom.

WI 1400 Acceptance or procurement procedure (Options C and E)

State any acceptance or procurement procedures which apply in addition to the constraints in section WI 1200 Subcontracting. This is only applicable to Options C or E that we use, where payment to the *Contractor* is based on Defined Cost. The definition of Disallowed Cost refers to the acceptance and procurement procedures stated in the Works Information. If you wish to state any restrictions this is where it should be done.

WI 1500 Accounts and records (Options C and E)

Detail any records to be kept by the *Contractor*, in addition to those listed in subclause 52.2.

WI 1501 Additional Records

Clause 52.2 (Options C and E) List the additional records to be kept by the *Contractor*. This may include the following:

- Timesheets and site allocation sheets,
- Equipment records,
- Forecasts of the total Defined Cost,
- Specific procurement and cost reports

Define the format and presentation of records to be kept.

WI 1600 Parent Company Guarantee (Option X4)

Include the form of performance bond as set out in Schedule 18 of the Framework Agreement.

WI 1700 Employer's work specifications and drawings

Include here the detailed work specifications and drawings which describe the *works*. A contents list may be provided or the documents themselves may be included or both.

WI 1701 Employer's work specification

Contents list or documents or both

WI 1702 Drawings

Contents list or documents or both



Non-returnable documents
NEC – ECC 3rd Ed.

Section 4
Site
information

4.1	Boundaries, access and position of the works and compound area
4.2	Existing buildings on or adjacent to the site
4.3	Existing services



Non-returnable documents
NEC – ECC 3rd Ed.

**Section 5
Contract
schedules**

- 5.1 Spare parts schedule
- 5.2 Special tools
- 5.3 Other schedules as appropriate



Spare parts NEC – ECC 3 rd Ed.	Contract schedule: 5.1
---	---------------------------------------

The following spare parts are recommended for the operation and maintenance of the works.



Special tools NEC – ECC 3 rd Ed.	Contract schedule: 5.2
---	---

The following special tools required for the operation and maintenance of the works will be provided by the contractor by the dates shown.



Other schedules NEC – ECC 3 rd Ed.	Contract schedule: 5.3
---	---

If other schedules are required, list them here.

Non Returnable documents NEC – ECC 3 rd Ed	Section 6 Other documents
---	--

Other documents as referred to in the WI as appropriate.

The following documents shall be supplied by the *Employer* for each Work Package, Package Order and Time Charge Order made under this Framework Agreement.

7	Document summary and contents list	A guide to the tender documents.
8	Information for contractors completing the contract document and the tender form	Tendering arrangements and the formal offer to carry out the work.
9	Contract data part two	Data (supplied by the Contractor) required by the conditions of contract specific to this contract.
10	Pricing data	The activity schedule Option A and C or the forecast of the total defined cost Option E Risk register The risk budget
11	Tender schedules	Information required with the tender and the Contractor's technical offer. Includes certificates for completion and return with the tender.

Schedule 2.

Part 2 - PSC Non-Returnable Documents



**Contract document
PSC 3rd Ed.**

Contract for: <Contract title>
Project Ref: <EA Project ref.>

Non Returnable Documents

Contents
 Contract data
 Scope

Prepared by: <<insert name>>
 Date: <<insert date>>
 Version: <<insert version number>>

Environment Agency
 <<Address of the Environment Agency office at which the EA project manager is based.>>

February 2013

© Environment Agency 2013



Non-Returnable documents
PSC 3rd Ed.

Section 1
Contents

Section 1 - Document summary and contents

Document summary			
	Section	Title	Description
Non-Returnable Documents	1	Document summary and contents list	A guide to the documents and 'tendering' arrangements.
	2	Contract data part one	Data (supplied by the <i>Employer</i>) required by the conditions of contract specific to this contract.
	3	Scope	The specification and description of the services and constraints on how the <i>Supplier</i> is to provide the services.
Returnable Documents	4	Document summary and contents list	A guide to the tender documents
	5	Contract data part two	Data (supplied by the <i>Supplier</i>) required by the conditions of contract specific to this contract.
	6	Pricing data	The <i>activity schedule</i> Option A and C. /The forecast of the total defined cost Option E [Delete one] Risk register The risk budget
	7	Consultant's schedules	Information required with the tender and the <i>Supplier's</i> technical offer. Includes certificates for completion and return with the tender.


Contract Documents
 PSC 3rd Ed.

Section 2
Contract Data
Part one
Data provided by the *Employer*

Contract for .	Drafting Instructions Delete this whole right column and drag this line to right hand boundary before issuing
1. General	Choose one main option only.
<ul style="list-style-type: none"> The conditions of contract are the core clauses and the clauses for the Options set out below of the NEC3 Professional Services Contract (June 2005) and amended by June 2006 and September 2011 	The EA accepts this risk
A: Priced contract with activity schedule	Optional discuss with OCL
C: Target contract	Optional discuss with OCL
E: Time based contract	Standard requirement Standard requirement Performance bond to be used when a suitable Parent Company Guarantee has not been provided under the framework. Discuss with OCL.
W2: Dispute Resolution Procedure (use when Housing Grants, Construction and Regeneration Act 1996 applies)	Must be used if HGCR Act applies
X2: Changes in the law	Must be used
X5: Sectional Completion	
X7: Delay Damages	
X8: <i>Collateral warranty agreements</i>	
X9: Transfer of rights	
X11: Termination by the <i>Employer</i>	
X13: Performance Bond	
Y(UK)2 The Housing Grants Construction and Regeneration Act 1996	
Y(UK)3 The Contracts (Rights of Third Parties) Act 1999	

<p>The following matters will be included in the Risk Register: As shown in document xxxxx, dated xxxxx.</p>		<p>The contract Risk Register is a way of documenting Early Warnings to aid contract management. This is not to be confused with the project risk register. Standard requirement</p> <p>Describes the <i>services</i>. The description should enable the <i>services</i> to be identified but need not go into detail which will be in the Scope.</p> <p>Note: EA PM address details provided on front cover.</p> <p>Standard requirement</p> <p>Standard wording</p> <p>Standard requirement</p> <p>Standard requirement</p> <p>Normally this would be 2 weeks</p> <p>Standard requirement</p> <p>Standard requirement</p> <p>Standard requirement</p>
<p>Z: The Additional conditions of contract are in point 10. Option Z</p>		
<ul style="list-style-type: none"> The services are 		
<ul style="list-style-type: none"> The <i>Employer</i> is Environment Agency Horizon House Deanery Road BRISTOL BS1 5AH <i>Employer's project manager:</i> 		
<ul style="list-style-type: none"> The <i>Adjudicator</i> is, the person appointed by the <i>Adjudicator nominating body</i>. The referring Party pays the administrative charge made by the <i>Adjudicator nominating body</i>. 		
<ul style="list-style-type: none"> The Scope is in Section 3 of this Contract document. 		
<ul style="list-style-type: none"> The <i>law of this contract</i> is the law of England, subject to the jurisdiction of the English Courts. 		
<ul style="list-style-type: none"> The <i>language of this contract</i> is English. 		
<ul style="list-style-type: none"> The <i>period for reply</i> to a communication is 2 weeks. 		
<ul style="list-style-type: none"> The <i>period for retention</i> of documents is 6 years following Completion or earlier termination. The <i>Adjudicator nominating body</i> is the Institution of Civil Engineers The <i>tribunal</i> is litigation in the courts. 		
<p>2. The Parties main responsibilities</p>		
<ul style="list-style-type: none"> The <i>Employer</i> provides access to the following people, places and things. 		
Access to	<i>access date</i>	
People, equipment, facilities and premises.	As is on the programme	

		<p>Only include if the target or time based main options C or E are used</p>															
<ul style="list-style-type: none"> The <i>Consultant</i> prepares forecasts of total Time Charge and <i>expenses</i> for the <i>services</i> at intervals no longer than one month. 																	
<p>3. Time</p>																	
<ul style="list-style-type: none"> The <i>starting date</i> is The <i>completion date</i> for the whole of the <i>services</i> is The <i>completion date</i> for each Section of the <i>services</i> is <table border="1" data-bbox="204 857 1023 1137"> <thead> <tr> <th>Section</th> <th>Description</th> <th>Amount per day</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3</td> <td>.....</td> <td>.....</td> </tr> <tr> <td colspan="2">Remainder of the <i>services</i></td> <td>.....</td> </tr> </tbody> </table> <ul style="list-style-type: none"> The <i>Consultant</i> submits revised programmes at intervals no longer than 4 weeks. 		Section	Description	Amount per day	1	2	3	Remainder of the <i>services</i>		<p>Standard wording</p> <p>EA Project Managers shall state the required completion date. Supplier to state if they can bring this date forward. Date to be amended prior to Contract Award.</p> <p>If X5 and X7 used calculate damages as a genuine loss and get signed off by Commercial and Programming Manager. Fully define <i>sections</i> in Scope</p> <p>Period should not be more frequent than needed for good management. 4 weeks.</p>
Section	Description	Amount per day															
1															
2															
3															
Remainder of the <i>services</i>																
<ul style="list-style-type: none"> The <i>key dates</i> and <i>conditions</i> to be met are <table border="1" data-bbox="188 1368 1099 1559"> <thead> <tr> <th>Section</th> <th>Description</th> <th>Completion date</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> </tr> </tbody> </table>		Section	Description	Completion date	1.			2.			<p>Option only to be included and completed if there are critical deadlines for deliverables. Align with Construction contract or other contract or order dates.</p>						
Section	Description	Completion date															
1.																	
2.																	
<p>4. Quality</p>																	
<ul style="list-style-type: none"> The quality policy statement and quality plan are provided within 4 weeks of the <i>starting date</i>, if not previously provided by the <i>Consultant</i>. The <i>defects date</i> is 52 weeks after Completion of the whole of the <i>services</i>. 		<p>Standard requirement</p> <p>Standard requirement</p>															

5. Payment		
<ul style="list-style-type: none"> The <i>assessment interval</i> is one month. The period within which payments are made is 30 days from receipt of the <i>Consultant's</i> VAT invoice. The <i>currency of this contract</i> is pounds sterling (£). The <i>interest rate</i> is 2% per annum above the Bank of England Base Rate. There are no <i>expenses</i> stated by the <i>Employer</i> (<i>expenses</i> are deemed to be included in the lump sum prices for the activities). The <i>expenses</i> stated by the <i>Employer</i> are as follows. 		<p>Standard requirement</p> <p>Standard requirement</p> <p>Standard requirement</p> <p>Standard requirement</p> <p>Standard requirement only if option A is used.</p> <p>Standard requirement only if option C and E is used</p>
Item	Amount	
Telephone and fax charges	Nil (deemed to be included in <i>staff rates</i> as an overhead)	
Normal postage	Nil (deemed to be included in <i>staff rates</i> as an overhead)	
Postage by courier (by prior approval by the <i>Employer</i>)	At cost (no mark up)	
Printing and copying	Normal/routine/in-house -Nil (deemed to be included in <i>staff rates</i> as an overhead) Exceptional requirements – at cost (no mark up)	
Car mileage	46 pence per mile reducing to 25 pence per mile for mileage in excess of 4000 miles per annum for each individual member of staff	
Car hire, including fuel (by prior approval)	At reasonable cost, (no mark up)	
Public Transport/fares (by prior approval)	At reasonable cost, standard class only (no mark up)	
Overnight accommodation	At reasonable cost with prior approval of the <i>Employer</i> limited to a hotel accommodation rating of 3 stars or equivalent. (no mark up)	
Other disbursements connected with travel (not included above) and to cover such matters as third party fees	At reasonable cost (no mark up)	
Equipment hire (extra ordinary equipment required by the <i>Consultant</i> to complete the <i>services</i> requested, which would not normally be held by the <i>Consultant</i>)	At reasonable cost (no mark up)	
Sub consultant services not included in <i>staff rates</i>	at cost plus 2% mark up	

<ul style="list-style-type: none"> The <i>Consultant's share percentages</i> and the <i>share ranges</i> are <table border="0" style="width: 100%;"> <tr> <td style="text-align: left;"><i>Share range</i></td> <td style="text-align: right;"><i>Consultant's share percentage</i></td> </tr> <tr> <td>Less than 85%</td> <td style="text-align: right;">0%</td> </tr> <tr> <td>From 85% to 115%</td> <td style="text-align: right;">50%</td> </tr> <tr> <td>Greater than 115%</td> <td style="text-align: right;">100%</td> </tr> </table>	<i>Share range</i>	<i>Consultant's share percentage</i>	Less than 85%	0%	From 85% to 115%	50%	Greater than 115%	100%	<p>Option C</p>				
<i>Share range</i>	<i>Consultant's share percentage</i>												
Less than 85%	0%												
From 85% to 115%	50%												
Greater than 115%	100%												
<p>The total of the Prices are: £</p>	<p>Employer to insert for Project incentivised contracts (delete for Contract incentivised contracts as this is defined in Contract Data Part 2)</p>												
<p>6. Compensation events</p> <p>There is no Contract Data required under this heading.</p>	<p>May be changed, to add extra CE's for example.</p>												
<p>7. Title and confidentiality</p> <p>There is no Contract Data required under this heading.</p>	<p>Unlikely to need to change</p>												
<p>8. Indemnity and insurance</p> <ul style="list-style-type: none"> The amounts of insurance and the periods following Completion for which the <i>Consultant</i> maintains insurance are 	<p>Standard requirement</p>												
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Event</th> <th style="width: 45%;">Cover</th> <th style="width: 30%;">Period following Completion of the whole of the <i>services</i> or earlier termination</th> </tr> </thead> <tbody> <tr> <td>failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i></td> <td>£5m in respect of each claim without limit to the number of claims</td> <td>12 Years</td> </tr> <tr> <td>personal injury to or death of a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i></td> <td>£5m in respect of each claim without limit to the number of claims</td> <td>12 months</td> </tr> <tr> <td>bodily injury to or death of employees of the <i>Consultant</i> arising out of and in course of their employment in connection with this contract</td> <td>Whichever is the greater of £5M or the amount required by law.</td> <td>for the period required by law</td> </tr> </tbody> </table>	Event	Cover	Period following Completion of the whole of the <i>services</i> or earlier termination	failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£5m in respect of each claim without limit to the number of claims	12 Years	personal injury to or death of a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	£5m in respect of each claim without limit to the number of claims	12 months	bodily injury to or death of employees of the <i>Consultant</i> arising out of and in course of their employment in connection with this contract	Whichever is the greater of £5M or the amount required by law.	for the period required by law	
Event	Cover	Period following Completion of the whole of the <i>services</i> or earlier termination											
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£5m in respect of each claim without limit to the number of claims	12 Years											
personal injury to or death of a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	£5m in respect of each claim without limit to the number of claims	12 months											
bodily injury to or death of employees of the <i>Consultant</i> arising out of and in course of their employment in connection with this contract	Whichever is the greater of £5M or the amount required by law.	for the period required by law											
<ul style="list-style-type: none"> The <i>Employer</i> provides the following insurances – None. The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or connection with this contract, other than excluded matters, is limited to an aggregate of £5 million per individual contract. 													

<p>9. Disputes and termination</p> <p>There is no Contract Data required under this heading</p>	
<p>10. Option Z: The <i>additional conditions of contract</i> are:</p>	
<p>Z 1 Disputes:</p> <p>The Parties agree that adjudication under Clause option W2 should only commence if the Framework dispute resolution procedure has been exhausted and that the dispute resolution procedure in the WEM Agreement, takes precedence over Option W2.</p>	
<p>Z2 The text of Cl 18 Prevention is deleted.</p> <p>Delete the text of Cl 60.1(11) and replaced by:</p> <p>The <i>services</i> are affected by any of the following events</p> <ul style="list-style-type: none"> • War, civil war, rebellion, revolution, insurrection, military or usurped power; • Strikes, riots and civil commotion not confined to the employees of the <i>Consultant</i> and sub consultants, • Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel, • Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device, • Natural disaster, • Fire and explosion, • Impact by aircraft or other aerial device or thing dropped from them. 	<p>To be used on Option A, C and E</p>
<p>Z 3 A Disallowed Costs</p> <p>Add clause 11.2 (26) Disallowed costs</p> <p>Disallowed costs are:</p> <ul style="list-style-type: none"> • Not justified by the <i>Consultant's</i> accounts and records. • Should not have been paid to a sub consultant in accordance with his Sub contract (including compensation events with the sub consultant, i.e. payment for work that should not have been undertaken) • Incurred because the <i>Consultant</i> did not follow a stated procedure in the Scope. • Mistakes or delays caused by the <i>Consultant's</i> failure to follow standards in Scopes/quality plans. • Reorganisation of the <i>Consultant's</i> project team. • Additional costs or delays incurred due to <i>Consultant's</i> failure to comply with published and known guidance or document formats. • Exceeding the Scope without prior instruction that leads to abortive cost • Re-working of documents due to inadequate QA prior to submission, i.e. grammatical, factual arithmetical or design errors. • Production or preparation of self-promotional material. • Correction of a Defect before or after Completion 	

<ul style="list-style-type: none"> • Staff not approved to work on a project • Excessive charges for project management time on a commission for secondments or full time appointments (greater than 5% of commission value) • Any hours exceeding 7.5 per day unless with prior agreement with the <i>Employer</i>. • Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the <i>Employer</i>. • Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the <i>Employer</i> • Costs associated with the attendance at additional meetings after programmed completion, if delay is due to <i>Consultant</i> performance. • Costs associated with rectifications that are due to <i>Consultant</i> error or omission. • Costs associated with the identification of opportunities to improve our processes and procedures for project delivery through the <i>Consultants</i> involvement 	
<p>Z 3 B Disallowed Costs</p> <p>In Clause 50.3, third bullet, insert after the words “less amounts” “ for Disallowed Costs and amounts”</p>	<p>Only for use with Option C and E</p>
<p>Z 3C Disallowed Costs</p> <p>In Clause 63.1, second bullet, replace full stop with comma and append:</p> <ul style="list-style-type: none"> • less Disallowed Costs 	<p>Only for use with Option A (for valuing Compensation Events)</p>
<p>Z4 Share on termination</p> <p>Delete existing clause 92.3 and replace with:</p> <p>92.3 In the event of termination in respect of a contract relating to <i>services</i> there is no <i>Consultant’s</i> share’</p>	<p>Must be used if Option C is selected. Not used if a secondment</p>
<p>Z5 Secondments</p> <p>When appointing <i>Consultants</i> on a secondment basis only, the following Z Clause shall not be applicable:</p> <p>Z4 Share on termination</p> <p>Add clause 14</p> <p>14.1 The <i>Employer</i> will during the Secondment Period indemnify the <i>Consultant</i> against any and all liabilities, proceedings, costs, losses, claims and demands whatsoever arising directly or indirectly out of the activities of the Employee in providing the Secondment Services save where such claims, in the reasonable opinion of the <i>Employer</i>, arise from or are contributed to by:</p> <p>14.1.1 Misrepresentation or negligence by or on behalf of the <i>Consultant</i>; or</p> <p>14.1.2 The Employee has acted contrary to the <i>Employer’s</i> reasonable instructions or wholly outside the scope of the Employee’s duties as defined by the <i>Employer</i>.</p>	

<p>Z 18 Programme Incentivisation</p> <p>53.4 The <i>Employer</i> makes a final assessment of the <i>Consultant's share</i>, using the final price for Services Provided to Date and the final total of the Prices. In accordance with Schedule 8, only one third of the <i>Consultant's share</i> will be certified by the <i>Employer</i>. The remainder of the gainshare will be dealt with as set out in Framework Schedule 8 clause 10.</p>	<p>Include this clause only for Programme incentivised contracts. Seek guidance from your OCL</p>
<p>Z19: Consultant's Share</p> <p>Delete existing clause 54.3 and replace with:</p> <p>54.3 The <i>Employer</i> shall regularly assess during the <i>services</i> the difference between the Price for Services Provided to Date against the total of the Prices. If the <i>Employer</i> assess that the Price for Services Provided to Date is greater than the top <i>share range</i> in the Contract Data Part 1 (115% of the total of the Prices) then the <i>Employer</i> shall be entitled to take the <i>Consultant's share percentage</i> into account when assessing amounts in clause 50 and clause 51 due for payment at each assessment date thereafter and shall not pay any amount greater than the top <i>share range</i> in the Contract Data Part 1 (115% of the total of the Prices). For avoidance of doubt, this shall only apply when the <i>Consultant</i> reaches the top <i>share range</i> and the <i>Employer</i> shall follow the procedure in clause 54.4 and clause 54.5 in assessing the other <i>share ranges</i>.</p> <p>Delete existing clause 54.4 and replace with:</p> <p>54.4 If clause 54.3 does not occur during the <i>services</i>, the <i>Employer</i> makes a preliminary assessment of the <i>Consultant's share</i> at Completion of the whole of the <i>services</i> using his forecasts of the final Price for Services Provided to Date and the final total of Prices. This share is included in the amount due following Completion of the whole of the <i>services</i>.</p> <p>Insert the following new clause 54.5:</p> <p>54.5 If clause 54.3 does not occur during the <i>services</i>, the <i>Employer</i> makes a final assessment of the <i>Consultant's share</i>, using the final price for Services Provided to Date and the final total of the Prices. This share is included in the final amount due.</p>	<p>Option C projects only (where Z18 is not used)</p>



Contract Documents
PSC 3rd Ed.

Section 6
Scope

6. 20 The Parties' main responsibilities

6. 20.1 Details of the *services*

Details of the *services* are :

Scope to be inserted here

The following documents shall be supplied by the *Employer* for each Work Package, Package Order and Time Charge Order made under this Framework Agreement.

4	Document summary and contents list	A guide to the tender documents
5	Contract data part two	Data (supplied by the <i>Supplier</i>) required by the conditions of contract specific to this contract.
6	Pricing data	The <i>activity schedule</i> Option A and C or the forecast of the total defined cost Option E Risk register The risk budget
7	Consultant's schedules	Information required with the tender and the <i>Supplier's</i> technical offer. Includes certificates for completion and return with the tender.

Schedule 3.

Part 1- ECC Returnable Documents

Contract documents

NEC – ECC 3rd Ed.

Contract for:

Write title here

Project No.:

Contract No.:

Short description of the work to be done (not more than about six lines)

Returnable documents

Document summary and contents

Information for contractors

Contract data part two

Pricing data

Tender schedules

Environment Agency address

EA PM's address

Date:

Version:

Author:



Returnable documents
NEC – ECC 3rd Ed.

Section 7
Document
summary and
contents

Section 7 - Document summary and contents

Document summary			
	Section	Title	Description
Non-Returnable Documents	1	Document summary and contents list	A guide to the documents and 'tendering' arrangements.
	2	Contract data part one	Data (supplied by the <i>Employer</i>) required by the conditions of contract specific to this contract.
	3	Works information	The specification and description of the works and constraints on how the <i>Contractor</i> is to provide the works.
	4	Site information	Information describing the site (and its surroundings)
	5	Contract schedules	Forms and other documents not required until after a contract is placed.
	6	<i>Other documents</i>	If required.
Returnable Documents	7	Document summary and contents list	A guide to the tender documents
	8	Information for contractors completing the contract document and the tender form	Tendering arrangements and the formal offer to carry out the work
	9	Contract data part two	Data (supplied by the <i>Contractor</i>) required by the conditions of contract specific to this contract
	10	Pricing data	The <i>activity schedule</i> Option A and C. /The forecast of the total defined cost Option E [Delete one] Risk register The risk budget
	11	Tender schedules	Information required with the tender and the <i>Contractor's</i> technical offer. Includes certificates for completion and return with the tender.



Returnable documents NEC – ECC 3 rd Ed.	Section 8 Information for Contractors and Tender Form
--	--

8.1 To be provided



Returnable documents NEC – ECC 3 rd Ed.	Section 9.1 Contract data part two
--	---

Data provided by the <i>Contractor</i>

	Contractor’s drafting instructions 1. Contractor <ul style="list-style-type: none"> • Completes data in left column and then • deletes this row • deletes the two right hand columns and • drags this line to right hand boundary before returning document to project manager.	Project manager’s drafting Instructions 1. <i>PM</i> , in consultation with the Contractor deletes any rows that are not required, before issuing to contractor 2. Data in bold type is mandatory 3. ↓ indicates additional advice available in comment box
<ul style="list-style-type: none"> • The <i>Contractor</i> is Name: Address: 	Name and address etc of <i>contractor</i>	

<ul style="list-style-type: none"> The <i>direct fee percentage</i> is % The <i>subcontracted fee percentage</i> is % 		N.B. these are capped by the percentage submitted at Framework level	
<ul style="list-style-type: none"> The <i>working areas</i> are the site and . 		Working areas in addition to the site could be for example: Fabrication yard Concrete batching plant Holding areas For design and build projects the designer's office would be a working area (The Contractor's factory is not a working area)	
<ul style="list-style-type: none"> The key people are: 		Name key people to be working on the contract: typically at least: Director/senior manager Contract manager Site manager Include a WEM Staff Proforma if appropriate.	The Contractor completes the details to suit the individual contract. The quality of staff offered for a contract may be part of the in-framework competition. In any event the staff offered will be reviewed jointly by the Employer and Contractor to assess the suitability of the staff before the contract data is finally incorporated into the contract
1	Name		
	Job		
	Responsibilities		
	Qualifications		
	Experience		
2	Name		
	Job		
	Responsibilities		
	Qualifications		
	Experience		
3	Name		
	Job		
	Responsibilities		
	Qualifications		
	Experience		
The following matters will be included in the risk register (see Returnable documents: Section 10: Pricing data):		Contractor to identify any key risks they believe are not identified on the risk	This does not include Contractor risks, which are included in the tendered total of
Risks	Action		

1.	Additional project risks (not contractor risks) identified by the <i>contractor</i> are: - Note: - These will be reviewed by the employer in consultation with the successful bidder for inclusion into the risk register to be used by the parties to manage the contract works.		register. These additional risks will be dealt with in accordance with the conditions of contract	the prices.
<ul style="list-style-type: none"> The Works Information for the <i>Contractor's</i> design is in dated reference 			Must be included in contract data if the Contractor is to provide works information for his design	
<p>The programme identified in the contract data is in, or referred to in schedule 11.8, 'Programme'.</p>			<p>This will normally be required – main purpose is to inform how the <i>Contractor</i> intends to carry out the work and how it affects the <i>Employer's</i> other activities</p> <p>↓</p>	
<ul style="list-style-type: none"> The activity schedule is in Section 10 of the returnable documents 			Only include and complete if 'activity schedule' Options A or C is used	
<ul style="list-style-type: none"> The tendered total of the prices is 			Only include and complete if Option A or C is used	
Data for schedule of cost components				

<ul style="list-style-type: none"> The hourly rates for defined cost of manufacture or fabrication outside the working areas will be agreed on a contract specific basis between the <i>Employer</i> and the <i>Contractor</i>. 			
Category of employee	Hourly rate		
<ul style="list-style-type: none"> The hourly rates for defined cost of design outside the working areas for directly employed people will be agreed on a contract specific basis between the <i>Employer</i> and the <i>Contractor</i>. 			Does not apply to members of the Core Team working in the <i>Contractor's</i> Design Office
Category of employee	Hourly rate		

To be added: Such other contract data as appropriate to the project



Returnable documents
NEC – ECC 3rd Ed.

Section 10
Pricing data

- 10.1 Activity schedule
- 10.2 The forecast of the total defined cost
- 10.3 The risk register
- 10.4 Risk budget



<p>Activity schedule</p> <p>NEC – ECC 3rd Ed.</p>	<p>Section 10.1</p> <p>Pricing data</p> <p>Main Options A and C</p>
---	--

The works		
Contract number		
Activity	Description	Lump sum prices for activities £
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
Tendered total of the prices (carried forward to contract data part two)		

This offer will remain open for acceptance until[insert date]

Signature Date



Forecast of the total defined cost NEC – ECC 3 rd Ed.	Section 10.2 Pricing data Main Option E only
--	--

The works		
Contract number		
Activity	Description	Forecast of the total defined cost for activities £
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
	Forecast of the total defined cost £ (carried forward to contract data part two)	



Risk Register NEC – ECC 3 rd Ed.	Section 10.3 Pricing data Main Option C
---	--

To be inserted



Risk budget NEC – ECC 3 rd Ed.	Section 10.4 Pricing data Main Option C
---	--

Contractor risk budget allowance in the tendered total of the prices is....
£.....

This represents.....% as a percentage of the tendered total of the prices

**Returnable documents**
NEC – ECC 3rd Ed.**Section 11**
Tender
schedules

- 11.1 Statement by *Contractor*
- 11.2 Record of authorised amendments to the tender documents.
- 11.3 Proposed sub-contractors
- 11.4 Contract management
- 11.5 Quality assurance
- 11.6 Health and safety
- 11.7 Environmental management
- 11.8 Programme
- 11.9 Tests and inspections
- 11.10 Form of Agreement
- 11.11 Others schedules as appropriate



Statement by <i>contractor</i> NEC – ECC 3 rd Ed.	Section 11.1 Tender schedules
--	--

We confirm that, nothing in the information we have given in the tender schedules or appended to them, or the *Employer's* acceptance of our tender, changes our responsibility to provide the works in accordance with the works information or our liability for design.

Signed

Date

Name

Position

Contractor



Record of authorised amendments to the tender documents NEC – ECC 3 rd Ed.	Tender schedule: 11.2
---	--

List here



Proposed subcontractors

NEC – ECC 3rd Ed.

**Tender
schedule:
11.3**

We notify you that it is our intention to employ the following subcontractors on the works.

If we are awarded a contract for the works we agree that this notification does not change the requirement for us to submit the names of proposed subcontractors to the *Project Manager* for acceptance as required by Clause 26.

	Name and address of proposed subcontractor	Nature and extent of work	Previous experience with subcontractor including 'partnering'.
1.			
2.			
3.			
4.			

**Contract management**NEC – ECC 3rd Ed.**Tender
schedule:
11.4**

Note to contractors: Please describe the management arrangements for the *works*. You are requested to include:

1. An organisation chart showing on site and off-site management (including the key people you have identified in the contract data part two.)
2. CVs for people proposed for all identified posts. CVs should be a maximum of two sides of A4 of relevant experience tailored to the services required under this contract.
3. Details of the location (and functions) of offices from which the works will be managed.
4. Details of the experience of the staff who will be working on the *works* with respect to

- Working with the ECC option chosen for this contract.
- Partnering.

If staff experience of these matters is limited, an indication of relevant training that they have attended would be helpful.

5. An explanation of how you propose to allocate adequate resources to enable you to comply with the requirements and prohibitions imposed on you by or under the statutory provisions relating to health and safety.

Summary of items attached to this schedule:



Quality assurance

NEC – ECC 3rd Ed.

**Tender
schedule:
11.5**

Note to contractors: Please provide your tender quality plan here.

- The Quality Plan for this Contract will be developed for this project in line with our organisational quality management systems



<p>Health and safety NEC – ECC 3rd Ed.</p>	<p>Tender schedule: 11.6</p>
--	--

Health and safety – Competence and resources	
	<p>The health and safety procedures adopted under this Contract will be in line with our organisational quality management systems and health and safety policy.</p> <p>Our proposed approach and time allowance to deal with the high risk areas, including health and safety, particularly identified in the pre-tender health and safety plan, are:</p>
	<p>We have allowed the following time period from contract award for the development of the construction phase health and safety plan:</p>

We confirm that the answers to the above three questions and the management proposals described in tender schedule 11.3 will enable us to comply with the requirements and prohibitions imposed on us by or under the statutory provisions relating to health and safety.



Environmental management NEC – ECC 3 rd Ed.	Tender schedule: 11.7
--	--

Contractors should develop and extend the environmental information provided by the *Employer* with the tender, as stated in the works information

**Programme**NEC – ECC 3rd Ed.**Tender
schedule:
11.8**

Note to Contractors: Please provide your proposed programme. This programme should show:

1. The information required for a programme submitted for acceptance in accordance with Clause 31.2
2. Any other requirements for a programme stated in the works information.
3. Your statement on how you plan to do the work for each operation on the programme is to be provided below and not on the programme. However, you are still required to submit a fully resourced programme. Your response must include your approach to SHE.



Tests and inspections

NEC – ECC 3rd Ed.

Tender
Schedule:
11.9

Details of tests and inspections required **additional** to those detailed in the works information provided by the *Employer* are as follows



Agreement form
 NEC – ECC 3rd Ed.

**Tender
 schedule:
 11.10**

An agreement

This agreement is made on _____ day of _____ 20
 the _____ of _____

between _____
 of _____
 (the *Employer*)

and _____
 of _____
 (the *Contractor*)

Whereas the *Employer* wants to have provided the following works:

Now it is agreed that

1. The *Contractor* will provide the works in accordance with the contract.
2. The *Employer* will pay the amount due in accordance with the contract.
3. The documents forming part of this agreement are:

- the contract data part one
- the contract data part two
- the following documents

Executed as a deed by the *Employer*

Signed and delivered as a deed by

.....
Regional Solicitor,
Region/Environment Agency.
As attorney for and on behalf of the
Environment Agency acting pursuant to
Power of Attorney dated in the
presence of:

.....
signature of witness

.....
name of witness

.....
address of witness

Executed under hand by the *Employer*

.....
the *Employer*

.....
by signature

.....
name

.....
position

.....
and signature

.....
name

.....
position

Executed as a deed by the *Contractor*

.....
the *Contractor*

.....
by fixing his common
seal in the presence of

.....
signature of director

.....
name of director

Executed under hand by the *Contractor*

.....
the *Contractor*

.....
by signature of director

.....
name of director

.....
and signature of director or
company secretary

.....
name of director or
company secretary

Schedule 3 .

Part 2 – PSC Returnable Documents



**Contract document
PSC 3rd Ed.**

Contract for: <Contract title>
Project Ref: <EA Project ref.>

**Returnable
Documents**

Document Summary and contents
Contract data part two
Pricing data
Consultant's Schedules

Prepared by: <<insert name>>
Date: <<insert date>>
Version: <<insert version number>>

Environment Agency
<<Address of the Environment Agency office at which the EA
project manager is based.>>

February 2013

© Environment Agency 2013

Section 4 - Document summary and contents

Document summary			
	Section	Title	Description
Non-Returnable Documents	1	Document summary and contents list	A guide to the documents and 'tendering' arrangements.
	2	Contract data part one	Data (supplied by the <i>Employer</i>) required by the conditions of contract specific to this contract.
	3	Scope	The specification and description of the services and constraints on how the <i>Supplier</i> is to provide the services.
Returnable Documents	4	Document summary and contents list	A guide to the tender documents
	5	Contract data part two	Data (supplied by the <i>Consultant</i>) required by the conditions of contract specific to this contract.
	6	Pricing data	The <i>activity schedule</i> Option A and C. /The forecast of the total defined cost Option E [Delete one] Risk register The risk budget
	7	Consultant's schedules	Information required with the tender and the <i>Consultant's</i> technical offer. Includes certificates for completion and return with the tender.



Contract Documents
PSC 3rd Ed.

Section 5
Contract Data
Part two

Data provided by the *Consultant*

<ul style="list-style-type: none"> The <i>Consultant</i> is Name: Address: 		Standard requirement
<ul style="list-style-type: none"> The <i>key persons</i> are: 		
1	Name	Name key people to be working on the contract However please state here details of any special qualifications or experience relevant to these <i>key jobs</i>
	Job	
	Responsibilities	
	Qualifications	
	Experience	
2	Name	Add more <i>key persons</i> following the two shown here if needed
	Job	
	Responsibilities	
	Qualifications	
	Experience	
<ul style="list-style-type: none"> The <i>staff rates</i> are included in 6.2 		
<ul style="list-style-type: none"> The programme identified in the Contract data is reference revision . dated 		This will always be included – main purpose is to inform how the <i>Consultant</i> intends to carry out the work and how it affects the Environment Agency's other activities and the project master plan. However for a simple service it may be no more than a single start and finish date.
<ul style="list-style-type: none"> The <i>activity schedule</i> is in Section 6, Pricing Data 		Only include and complete if an ' <i>activity schedule</i> ' is used (Options A or C only).



Contract Documents PSC 3 rd Ed.	Section 6.1 Pricing Data
--	---

6.1 Activity schedule

The services	
Contract Number	

Stage Activity Code	Description	Lump sum prices for activities £
	Tendered total of the Prices	

This offer will remain open for acceptance until[insert date]

Signature Date



Documents
PSC 3rd Ed.

Section 7
Consultant's
schedules

- 7.0 Statement by *Consultant*
- 7.1 Proposed Sub consultants
- 7.2 Management
- 7.3 Quality assurance
- 7.4 Health and safety
- 7.5 Programme
- 7.6 Example Form of Agreement



Statement by Consultant PSC 3 rd Ed.	Consultant's schedule 7.0
---	--

We confirm that nothing in the information we have given in the *Consultant's* schedules or appended to them, or the *Employer's* acceptance of our proposal, changes our responsibility to Provide the Services in accordance with the Scope or our liability for design.

Signed

Date

Name

Position

Consultant



**Proposed
Sub consultants**

PSC 3rd Ed.

**Consultant's
schedule: 7.1**

We notify you that it is our intention to employ the following Sub consultants on the *services*.
If we are awarded a contract for the *services* we agree that this notification does not change the requirement for us to submit the names of proposed Sub consultants to the *Employer* for acceptance as required by Clause 24.

	Name and address of proposed Sub consultant	Nature and extent of service	Proposed procurement method used/to be used to achieve value for money	Proposed conditions of contract to be used to purchase services from Sub consultant	Previous experience with Sub consultant
1.					
2.					
3.					
4.					



Management
PSC 3rd Ed.

**Consultant's
schedule: 7.2**

Note to framework Consultant: Please describe the management arrangements for the services. You are requested to include:

1. An organisation chart (including the key people you have identified in the Contract Data Part two).
2. If not already provided to the Employer, CV's for all key people should be a maximum of two sides of A4 of relevant experience tailored to the services required under this contract.
3. An explanation of how you propose to allocate adequate resources to enable you to comply with the requirements and prohibitions imposed on you by or under the statutory provisions relating to health and safety.

[This note is not part of the contract](#)

Summary of items attached to this schedule:



Quality assurance
PSC 3rd Ed.

**Consultant's
schedule: 7.3**

- The Quality Plan for this Contract will be developed for this project in line with our organisational quality management systems as stated in Contract Data Part One, Section 4, Quality.

**Health and Safety**
PSC 3rd Ed.**Consultant's
schedule: 7.4**

The health and safety procedures adopted under this Contract will be in line the Employers SHE code of Practice, our organisational quality management systems and our health and safety policy.

Our proposed approach and time allowance to deal with the high risk areas, particularly are:

**Programme**
PSC 3rd Ed.**Consultant's
schedule: 7.5**

Note: This programme should show:

1. The information required of a programme submitted for acceptance is in Clause 31.2.
2. Any other requirements for a programme stated in the Scope.
3. Your statement on how you plan to do the work for each operation on the programme is to be provided below and not on the programme. However, you are still required to submit a fully resourced programme. Your response must include your approach to SHE.



Form of Agreement
PSC 3rd Ed.

7.6

Contract Title:

This agreement is made on <INSERT DATE>

between the Environment Agency (the *Employer*)

and (the *Consultant*)

The *Employer* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data.

The *Consultant* will Provide the Services in accordance with the *conditions of contract* identified in the Contract Data.

Executed under hand by the *Employer*

the *Employer*

.....
by signature

.....
name

.....
position

.....
And signature

.....
name

.....
position

**Executed under hand by the
*Consultant***

the *Consultant*

.....
By signature of director

.....
name of director

.....
And signature of director or
company secretary

.....
name of director or
company secretary

OR (delete as applicable)

**Executed as a deed by the Employer
Signed and delivered as a deed by**

.....
Regional Solicitor,
Region/Environment Agency.

As attorney for and on behalf of the
Environment Agency acting pursuant to
Power of Attorney dated in the
presence of:

signature of witness

..... name of witness

..... address of witness

.....
Executed as a deed by the *Consultant*
the *Consultant*

.....
by fixing his common
seal in the presence of

signature of director

..... name of director

.....

Schedule 4 Collaborative Working

1. The *Employer* and Suppliers agree to adopt a partnering approach in the application of the provisions of this Framework Agreement and to work collaboratively in the delivery of all Work Packages, Package Orders and Time Charge Orders. As soon as practicable a Charter will be developed and signed by the *Employer*, Suppliers and representatives from other Flood Risk Management Authorities.
2. For projects to deliver best value for money, the *Employer* and Suppliers agree that it is necessary to create an effective and appropriate integrated project management team at an early stage in each project's development. The exact roles and extent of involvement of the parties will vary on a project by project basis but it is essential that key stages of the project process are mapped out with roles and responsibilities of all parties in the team clearly defined in contract documents.
3. The *Employer* recognises the benefits of Early Supplier Engagement and may procure this through any Lot using the Professional Services Contract (PSC). The *Employer* may also use specialist suppliers or sub-contractors to Suppliers in any Lot for Early Supplier Engagement (ESE) using the PSC (Schedule 2 Part 2).
4. The *Employer* is encouraging Others (and particularly Risk Management Authorities) to use this Framework Agreement for Flood Risk and Environmental Management work within the *scope*. The Others will:
 - a. Sign a mirror framework agreement with the chosen Supplier(s) and/or after tendering the works or service pursuant to Schedule 6 award the successful Supplier a Work Package, Package Order and/or Time Charge Order
 - b. Use the standard Framework Agreement documents, adapted to comply with any Standing Regulations or other procedure
 - c. Seek tenders and award contracts in accordance with their own procedures
 - d. Supply project, commercial and Supplier performance information back to the *Employer* to be used in the Performance Management and Supplier Relationship Management processes described in Schedules 12 and 13.
5. Project teams will operate as follows:
 - a. The accountability for the team and the effective delivery of a project will always rest with the *Employer* or lead Risk Management Authority
 - b. At any stage of a project, one party or another will have the lead responsibility for the delivery of that stage. This responsibility may change between the different parties throughout the life of a project and will be decided in the best interests of the project
 - c. Team members will contribute to the different stages of a project at all times adding value and working in the best interests of the project
 - d. In accordance with the principles laid down in the Charter.

Schedule 5 Safety, Health and Environment

SHE CoP and Handbook

1. The *Supplier* must fully comply with the Safety, Health and Environment (SHE) Code of Practice (CoP) and requirements outlined in the SHE Handbook. These are subject to revision and addition throughout the term of this Framework Agreement. Suppliers are required to contribute to the development of these through the framework management arrangements.

Yellow & Red Cards

2. In addition to the regular monitoring and review of the *Supplier's* performance carried out as part of the Framework management arrangements, the *Employer* will operate a Yellow and Red Card system. This will investigate incidents and reported management failings with the aim of identifying and sharing lessons or improvements across the Suppliers. These will operate independently to any legal proceedings should these be invoked.
3. The Yellow/Red Card assessment procedure will be triggered by the *Employer* in the following circumstances:
 - a. Act or omission by a *Supplier* leading to a prosecution
 - b. Act or omission by a *Supplier* leading to an infringement of legislation or has the potential to lead to prosecution
 - c. Any act or omission by a *Supplier* or its agents which significantly contributes to another *Supplier's* failure to comply with their legal duties
 - d. Any act of negligence by a *Supplier* or its agents which significantly increases the risk to others or the environment during or after the execution of the works/services
 - e. Repetitive (6 number) breaches of legislation within a six month period across the *Supplier's* portfolio of works
 - f. Failure to follow corporate management systems, or inadequacy of those systems requiring intervention by the *Employer* or others to prevent any of the above.
 - g. Management failings, requiring intervention by *Employer's* staff or others to prevent any of the above.
4. Where any of these circumstances occur, the *Employer's* Asset Operational Services (AOS) Commercial Manager will notify the *Supplier's* Framework Manager that the Yellow/Red Card assessment procedure is to be triggered.
5. The Supplier's performance on the particular Work Package, Package Order or Time Charge Order where the incident has occurred will then be reviewed by a party nominated by the *Employer*, consulting with the Project Managers involved. The findings will be reported to the *Employer's* AOS Commercial Manager who will provide a copy of the report to the *Supplier's* Framework Manager. The findings of the report will then be discussed by representatives of the *Employer* and the *Supplier*. Dependent on the findings and discussions the *Employer's* AOS Commercial Manager, or other designated officer, will decide whether a Card should be issued and if so whether it should be Yellow or Red. The decision will be communicated in writing to the *Supplier*.
6. Where two incidents that would normally have resulted in Yellow Cards when considered individually, occur on the same contract within any six-month period a Red Card will be issued.
7. Where two incidents, of the same nature, that would normally have resulted in Yellow Cards when considered individually, occur across the *Supplier's* portfolio of Work Packages, Package Order and/or Time Charge Orders for the *Employer* within any six-month period, a Red Card will be issued.

8. Where any four incidents that would normally have resulted in Yellow Cards when considered individually, occur across the *Supplier's* portfolio of contracts for the *Employer* within any twelve-month period, a Red Card will be issued.
9. Following the issue of a Yellow/Red Card the *Supplier* will prepare an Action Plan to address the management failures that led to the incident and a training/monitoring programme to demonstrate improved performance will be agreed. The *Supplier's* SHE performance will be reviewed by the *Employer* on a monthly basis. Six months after the occurrence of the incident the *Employer* and *Supplier* will hold a Yellow/Red Card review meeting. Provided the *Employer* is fully satisfied with the *Supplier's* SHE performance, the Yellow/Red Card will be withdrawn. Failure to implement the Action Plan within agreed timescales will result in
 - A Yellow Card being replaced by a Red Card
 - A twelve month suspension from the Framework Agreement for failure to implement an action plan following a Red Card
10. In addition to the ongoing review/monitoring process, depending on the nature and severity of the incident or management failures, the effects of a Red Card will be one or more of the following:
 - a. In all instances, the *Supplier* will forgo all of the gain share(s) that they would normally be entitled to under the terms of the contract, on the project(s) to which the Red Card relates. This would be determined at the *Employer's* sole discretion
 - b. Two Red cards issued within a twelve month period will result in the *Supplier's* suspension from the Framework Agreement for twelve months
 - c. Four Red cards issued over the term of the Framework Agreement will result in termination of the Framework Agreement with the *Supplier* concerned
11. The *Supplier* is permitted to challenge the findings or outcomes of either a Yellow or Red Card through the contract dispute resolution process (clause Z25 of the Framework Agreement).

Schedule 6 Lot selection and Work Allocation

Lot Selection

1. This Framework Agreement comprises of 4 Lots that have been set up to provide the *Employer* with maximum flexibility with regard to how Suppliers are engaged and to build the best team for the job by drawing expertise from across the Lots. Following determination that this Framework Agreement is the appropriate procurement route for a particular requirement, the most suitable/appropriate Lot, or combination of Lots, will be selected by the *Employer* at the *Employer's* Project Procurement Strategy meeting. This decision will be based on the requirements of the project, the work streams each Lot is set up to deliver and the skills available. *The Employer* will frequently require Suppliers in one Lot to work with Suppliers from other Lots.

Work Allocation

2. The *Employer* does not guarantee any particular level of work under this Framework Agreement. There will be no upper or lower limit of work for the *Supplier*. Award of commissions will be dependent on:
 - a. Suppliers having the technical capability and resource available to undertake individual commissions within required timescales
 - b. Suppliers being able to offer value for money proposals to carry out the services required.
3. Work will normally be awarded through this Framework Agreement following a competitive process. It is *the Employer's* aspiration to work with the Suppliers to look to increase the size of individual commissions by appropriate packaging of related work and therefore look to reduce the number of competitions throughout the term of this Framework Agreement and to drive better value.
4. In Lot 4, construction works Package Order, Work Packages and/or Time Charge Orders will either be competed prior to business case approval or following Completion of the Works Information. Competition will take place once all project costs (other than construction) have been defined and an outline design or outcome specification has been developed to a sufficient level of detail to enable the Suppliers to provide a competitive price.

Pre business case competition in Lot 4

5. Competition may be held pre-project appraisal report for projects with the following characteristics:
 - a. Complex projects containing significant risks where there is a need for suppliers to innovate and input into design from the outset and where performance or outcome specifications are defined
 - b. Asset re-conditioning projects where performance or outcome specifications are defined.

Works Information competition in Lot 4

6. Competition may be held following issue of Works Information for projects with the following characteristics :
 - a. Low risk projects where there is less potential for contractors to influence detailed design.
7. In all cases, the decision as to the appropriate procurement strategy will be taken by the *Employer's* Project Team.

Call Off Criteria and Award Procedure

8. The *Employer* (or Others) shall apply the following criteria and weightings for the most economically advantageous tender ("MEAT") to the Suppliers' compliant tenders. The *Employer* or Others shall determine any sub-criteria and their respective weightings prior to inviting tenders:

Evaluation Criteria	Criteria Weighting		
Quality	50% (this can be modified by the <i>Employer</i> or Others within a variance level of - /+50%)	Quality Evaluation Sub-Criteria	Sub-criteria Weighting Range %
		Methodology (inc. programme and risk)	To be set by <i>Employer</i> or Others
		Aesthetic and functional characteristics	To be set by <i>Employer</i> or Others
		Environmental characteristics	To be set by <i>Employer</i> or Others
		Delivery lead-time	To be set by <i>Employer</i> or Others
		Technical assistance	To be set by <i>Employer</i> or Others
		After sales service	To be set by <i>Employer</i> or Others
		Sustainability aspects	To be set by <i>Employer</i> or Others
		<i>Employer</i> or Others Lot Specific Requirements	To be set by <i>Employer</i> or Others
		Technical Merit	To be set by <i>Employer</i> or Others
		Staff (inc. experience)	To be set by <i>Employer</i> or Others
		Health and Safety	To be set by <i>Employer</i> or Others
		Innovation	To be set by <i>Employer</i> or Others
Price	50% (this can be modified by the <i>Employer</i> or Others within a variance level of - /+50%)	Price Evaluation	To be set by <i>Employer</i> or Others

9. The *Employer* (or Others) can select any combination of the Evaluation Sub-Criteria outlined above, but cannot introduce new Evaluation Sub-Criteria in addition those outlined above. The criteria are ranked in relative order of importance however the *Employer* or Others can allocate the percentage score to each selected Evaluation Sub-Criteria in accordance with their requirements and objectives.
10. If the *Employer* (or any Others entitled to call off a Work Package, Package Order or Time Charge Order under this Framework Agreement) decides to source its requirements under any Lot(s) within this Framework Agreement, then it will award its requirements in accordance with the procedure in this Schedule 6 and the requirements of the Public Contract Regulations 2006 (as amended) ("PCR") and any guidance under the PCR. The *Employer* (or Others) will award Package Orders, Work Packages or Time Charge Orders under this Framework Agreement either by:

Competition within the appropriate Lot

- a. If the *Employer* (or Others) can :-
- I. determine that its requirements can be met by the *scope* provided under this Framework Agreement (Schedule 1); then it shall
 - II. develop its requirements for either a Work Package, Package Order or Time Charged Order and invite all the Suppliers under the Lot capable of supplying the requirements to submit a tender;
 - III. refine the terms and conditions in the relevant Schedule 2 or 3 to reflect its requirements only to the extent permitted by and in accordance with the requirements of the PCR and this Framework Agreement;
 - IV. follow the PCR and any guidance to the PCR when conducting a call-off competition for its requirements and in particular:-
 - IV.(i) invite all Suppliers under the specific Lot who are capable of meeting the *Employer's* (or Others') requirements to submit a tender, that sets out clearly how it will meet the *Employer* (or Others) requirements and the contract price that will apply, for each specific Work Package, Package Order or Time Charge Order to be awarded. This would normally be issued to all the Suppliers in a given lot;
 - IV.(ii) by giving written notice by email to the designated contact for each of the Suppliers under the Lot;
 - IV.(iii) set a time limit for the receipt by it of the Suppliers which takes into account factors such as the complexity of the subject matter of the Work Package, Package Order or Time Charge Order and the time needed to submit tenders; and
 - IV.(iv) keep each tender confidential until the time limit set out in above paragraph has expired.
 - V. apply the above award criteria in paragraph 4 to the Suppliers compliant tenders submitted through the competition as the basis of its decision to award a Work Package, Package Order or Time Charge Order for its requirements;
 - VI. on the basis set out above, award its requirements in accordance with clause Z2.

Direct Allocation to one Supplier

- b. If the *Employer* (or Others) can determine that its requirements can be met by the scope of services provided under this Framework Agreement and that the emergency work requirements under Schedule 16 are met, the *Employer* (or Others) may award a Work Package, Package Order or Time Charge Order for its requirements directly to a specific Supplier within the Lot. The Work Package, Package Order or Time Charge Order must only apply to the emergency works (Schedule 16) to be carried out under this Framework Agreement.
11. Where the *Employer* (or Others) intends to issue a Work Package, Package Order or Time Charge Order, it shall complete/populate Part One or Part Two of Schedule Two (depending upon which is the most appropriate for that particular project) with the relevant information for that particular project and may include supplementary information/documents. The *Supplier* shall complete Part One or Part Two of Schedule Three (as appropriate) and provided such other information, documents and perform such actions as required by the *Employer* (or Others).

Schedule 7 Commercial Approach and Supplier Teams

Core Teams

1. All Staff proposed in the Tender Return Documents stage must be reasonably available to work on this Framework Agreement, Work Packages, Package Orders and Time Charge Orders.
2. The *Supplier* will have formed a '**Core Team**' for each Lot (in the Price Workbook for that Lot), within each of the *Employer's* regions, which can predominantly provide a service to that region, but also other regions and nationally, as required. The *Supplier* will have one team per region (within which they can provide a service). The *Supplier* shall have identified individuals in the Tender Return Documents who are available on a national basis, such as the *Supplier's Framework Manager*, or have a particular technical specialism which could be called upon or is available nationally – such individuals are nominated as part of the national team in the Price Workbooks for the relevant Lots and do not appear in the regional teams.
3. On the *commencement date* the *Supplier* shall complete a Staff Proforma (as set out in Appendix 1 to this Schedule 7) for each member of their proposed national and regional Core Teams (as identified in the Price Workbook(s)) and send this within 5 days of the *commencement date* to the *Employer*.
4. The *Employer* will maintain details of the names, grade, roles, salary and hourly rate information for individual members of staff in the core team. The information tables in Appendix 2 to Schedule 7 outline the education/experience and likely roles/activities the *Employer* envisage for each grade and should be used as a guide for determining the grade of proposed individuals. The rates submitted in the Price Workbook for the relevant Lot include overhead and profit as well as other factors, as detailed in Appendix 3 to Schedule 7. A 'Fee' may not be applied to rates of core team members. See below for definition of 'Fee.'
5. Although defined by a grade, the individual Staff will be charged at the individual rate as set out in the Price Workbook for the relevant Lot.
6. Only staff that are proposed in the Tender Return Documents (or are subsequently introduced through the "Changes to the Core Team" methodology described below) may be utilised on Package Orders, Work Package or Time Charge Orders awarded under this Framework Agreement.

Changes to the Core Team

7. Staff can be added to the core team following the commencement date by substitution or addition. This will be strictly controlled within the rules detailed below:
 - a. Substitutions for Staff in core teams will be permitted where the *Supplier's* core team Staff have either left the *Supplier's* business, or have been allocated onto other clients' projects or where they are only required for a short term specialist role. Substitutions must be agreed in writing by the *Employer's Framework Manager*.
 - b. Additions of Staff onto core teams will be at the absolute discretion of the *Employer's Framework Manager*.
 - c. For regional core teams, Staff cannot be substituted or added where this would cause the average rate for the relevant grade to increase the average rate for the relevant grade set out in the Price Workbook (taking account of annual rate reviews).
 - d. For national Core Teams, staff cannot be substituted or added where this would cause the average rate for the relevant grade to increase the average rate for the relevant grade set out in the Price Workbook (taking account of annual rate reviews).
8. The process for changes is as follows:

- a. The *Supplier's Framework Manager* will submit to the *Employer's Framework Manager* a Staff Proforma (as set out in Appendix 1 to this Schedule 7) including salary details, a rate proposal and the role that the new member of staff will be undertaking.
- b. This is then either accepted by the *Employer* or declined. The *Employer* reserves the right to not accept members of staff proposed who are unsuitable in terms of experience or expense (or any other reason) or where their inclusion in the core team causes the average rate for that grade to increase as set out in paragraphs 7(c) and 7(d) above.

Rate adjustment – People (All Lots)

9. Work Packages, Package Orders and Time Charge Orders will be priced using the rates set out in the Price Workbook for the relevant Lot. These rates shall be fixed for 12 months from the *commencement date*. The *Supplier* shall apply the *Employer's* policy for expenses as detailed in Appendix 4 to this Schedule 7.
10. The hourly rates for staff time and construction are set out in the Price Workbook for the relevant Lot and may be adjusted (at the discretion of the *Employer*) on each anniversary of the commencement date, after the fixed cost period (see paragraph 11 below), thereafter pending satisfactory performance throughout the year.
11. Rates will be fixed for 12 months from the *commencement date* after which point they may be adjusted (at the discretion of the *Employer*). On each subsequent anniversary of the commencement date, the *Employer* will decide (at its own absolute discretion) if it is appropriate to review rates, factors such as the current economic situation and performance will be taken into consideration. The *Supplier* will not be guaranteed an automatic increase in rates. If a rate review is undertaken it will be based on the sum of the following for individuals within the Core Teams:
 - a. Direct staff salary percentage increase (for each individual member of staff) x 0.7
 - b. Services Producer Price Index x 0.3
 - i. Details of the Services Producer Price Index can be found at:
<http://www.ons.gov.uk/ons/taxonomy/index.html?nscl=Price+Indices+and+Inflation>
 - c. The sum of these elements gives a figure by which to multiply the previous hourly rate to give the new rate.

Rate Adjustment – Construction (Lot 4 only)

12. All construction related rates will be fixed for 12 months from the *commencement date* at which point they may be adjusted (at the discretion of the *Employer*). On each subsequent anniversary of the *commencement date*, the *Employer* will decide if it is appropriate to review rates, factors such as the current economic situation and performance will be taken into consideration. The *Supplier* will not be guaranteed an automatic increase in rates. Any increase will be based on RPIx, as detailed on the Office for National Statistics website and would be established by comparing the RPIx for the previous 12 month period and applying the percentage change in the indices to the relevant rates in Lot 4.

Application of Rate Adjustment (all Lots)

13. In the event that Work Package, Package Order and/or Time Charge Order extends across an annual review, the following will apply :
 - a. Option A contract – the agreed total price will remain unchanged
 - b. Option C contract – the original target price will remain unchanged and the rates at time of contract award will apply

- c. Option E contract – the new rates will apply from the date of agreement of the annual rate review.
14. Revised rates should not be invoiced to the *Employer* until the changes have been agreed in writing and will only apply to work actually carried out after any revisions to the rates have been agreed.

Fee (NEC ECC only)

15. There are 2 types of Fee as described below:
- Direct Fee Percentage – this is a defined term under the NEC and can be applied to items within the Schedule of Cost Components. A Direct Fee Percentage cannot be applied to any sub-contract costs. Direct Fee Percentage may also be referred to in the Framework documentation as 'Fee'.
 - Sub-contract Fee Percentage – this is a defined term under the NEC and can be applied to all sub-contract costs except where indicated in the table below. Sub-contract Fee Percentage may also be referred to in the Framework documentation as 'Sub-contract Fee'.

The table below details how direct and subcontracted fee percentages can be applied. No other mark up can be applied under this Framework Agreement.

Fee application

	Direct Fee Percentage	Sub-contract Fee Percentage
Applies to:	All Items detailed in the <i>Schedule of Cost Components</i> (except those listed below) and including the percentage required for clauses 52 and 62 in the <i>Schedule of Cost Components</i>	Sub-contractor/consultancy works or services.
Does not apply to:	<ul style="list-style-type: none"> Sub-contractor/consultancy costs, inc. <i>Sub-contract Fee Percentage</i> Use of Environment Agency Frameworks or other Government Agency Frameworks Inter-organisation/cross-hire of plant and equipment (as detailed in Z17 in the ECC call off contract relating to Defined Costs Add clause 52.4). Core Team staff 	<ul style="list-style-type: none"> Items detailed in the <i>Schedule of Cost Components</i> Use of Environment Agency Frameworks or other Government Agency Frameworks Inter-organisation/cross-hire of plant and equipment (as detailed in Z17 in the ECC call off contract relating to Defined Costs Add clause 52.4). Sub-consultant/contractors named within Core Teams

16. A maximum *Sub-contract Fee* of 2% may be applied to sub-contractor and sub-consultant costs. The *Supplier* will have the freedom to reduce Direct and Sub-contract Fee on a project by project basis under the Framework Agreement.

Time

17. A standard working day for a member of Staff is 7.5 hours (not including site based personnel), subject to fluctuations resulting from the application of any flexible working arrangements the *Supplier* has in place. Effective working hours payable are those hours in the standard working day that the *Supplier's* technical staff work to provide services that are of direct benefit to the *Employer* but not included as part of the overhead.
18. The *Employer* will only reimburse the *Supplier* for time in excess of the 7.5 hour standard (subject to any fluctuations resulting from the application of flexitime arrangements) if:
 - a. The *Employer's* Project Manager has agreed in writing in advance that the overtime should be worked.
 - b. The *Supplier* actually pays the employee overtime for the hours worked.
19. Overtime payments should align with the *Supplier's* personnel policies.
20. Travelling time may be booked to a contract during the standard working day but, the *Employer* will not pay for commuting time or cost outside of normal working hours. Overtime should not normally be charged for time spent travelling to the *Employer's* business unless agreed in writing in advance by the *Employer's* Project Manager. Services should generally be provided by the *Supplier* from the most local office unless agreed with the *Employer's* Project Manager that specialist resource from another office would be beneficial to the project.

Co-location and Secondment of staff

21. Co-location is where a *Supplier's* employee is engaged to deliver project(s) on behalf of that *Supplier* from an office provided by someone other than that *Supplier*. Secondment is where a *Suppliers* employee is fulfilling an agreed role within the *Employers* structure.
22. Where the *Supplier's* Staff are engaged by the *Employer* on a co-located or secondment basis, the *Supplier* is required to provide such individuals at the discounted rate shown in the Price Workbook for the relevant Lot. Secondment disbursements will be agreed on an individual basis and paid at cost. There will be the presumption that only time and cost in addition to normally incurred travelling to their permanent place of work will be chargeable.

Expenses

23. The *Supplier* shall apply the *Employer's* policy for expenses as detailed in Appendix 4 to Schedule 7

Disallowed Costs

24. Disallowed Costs will be as defined in the individual Work Package, Package Order or Time Charge Order

Contractor specific costs – Lot 4 only

Rates

25. The *Employer* will maintain a list of unit rates for work items, plant, labour, materials, people and other units of measure.
26. These will be the agreed rates and will form the basis of competition pricing detailed below.
27. For Work Packages, Package Orders and Time Charge Orders, the *Supplier* will be required to submit an activity schedule as defined by the NEC ECC contract and a project specific price workbook. The project specific price workbook must provide a break down of costs for each call-off competition, based on the rates in the Price Workbook for the relevant Lot under the Framework Agreement. The *Supplier* cannot submit a rate that is higher than

those shown in the Price Workbook for the relevant Lot (subject to any agreed rate adjustment). However, the *Supplier* will be able to offer reduced rates as part of a call-off under the Framework Agreement, should they wish to do so by indicating a discount in each project specific Price Workbook. The *Employer* reserves the right to request further information to substantiate activity related costs.

28. The *Employer* will maintain details of *Supplier's* Direct Fee Percentage. The *Supplier* will be able to offer a reduced Direct Fee Percentage as part of a Work Package, Package Order or Time Charge Order, should they wish to do so. The Direct Fee Percentage must be included in project specific Lot 4 Price Workbook, but must not be applied to the Core Team rates or Contractors Risk elements of the pricing. The Direct Fee Percentage will remain fixed for the initial 4 year term of the Framework Agreement.

Appendix 1 to Schedule 7

The Staff Proforma needs completing for the following:

1. Each Core Team member as detailed in the Lot specific Price Workbook
2. The National Managers.

WEM FRAMEWORK STAFF PROFORMA	
Full Name	
Job Title	
Office Location	
Proposed Grade	
Role in Core Team	
Environment Agency Region/s they can support	
Key Skills	
Qualifications and Expertise	

Professional Membership
Details of last 6 projects (name and details of each project and role undertaken)

Please do not exceed two sides of A4. Any information over this limit will not be considered.

Appendix 2 to Schedule 7

Staff Experience and Grade tables

Table 1 Lot 1 – Mapping, Modelling and Data

Grade	Title	Education and Experience	Likely Roles/Activities
5	Director / Associate Director / Partner Associate / Principal	Chartered Engineer (or equivalent for example other professionals such as chartered surveyor) with extensive experience in technical and managerial aspects	<ul style="list-style-type: none"> • Director / Partner ultimately responsible for the project • Maintains an overview of several projects across your organisation • Overall project review • National Framework Manager
4	Senior Professional	Extensive management experience Chartered Engineer or equivalent, and minimum of eight years experience in relevant field	<ul style="list-style-type: none"> • Project Manager/ Routine project management • Planning and/or review of technical aspects • Technical Guidance of junior staff
3	Professional	Engineer or equivalent with a minimum 5 years experience in relevant field	<ul style="list-style-type: none"> • Routine technical input • Strategist • Fluvial Modeller (1D, 2D, combined) • Tidal/estuarine modeller (2D, 3D) • Sewer network/piped system modeller • Groundwater modeller • Hydrologist • GIS specialist • Surveyor (where in-house)
2	Graduate	Graduate with approximately 0-5 years postgraduate experience	<ul style="list-style-type: none"> • Assisting professionals
1	Technician	No prescribed experience criteria	<ul style="list-style-type: none"> • Senior Technician / Technician • Data entry • General clerical tasks

Table 2 Lot 2 – Environmental Services

Grade	Title	Education and Experience	Likely Roles/Activities
5	Director / Associate Director / Partner Associate / Principal	Chartered Environmentalist (or equivalent for example a member of the Institute of Ecology and Environmental Management) with extensive experience in technical and managerial aspects	<ul style="list-style-type: none"> • Director / Partner ultimately responsible for the project • Maintains an overview of several projects across your organisation • Overall project review • National Framework Manager
4	Senior Professional	Extensive management experience Chartered Environmentalist or equivalent, and minimum of eight years experience in relevant field	<ul style="list-style-type: none"> • Project Manager • Planning and/or review of technical aspects • Technical Guidance of junior staff • Main technical input • Senior Environmental Specialist/ Environmental Specialist • Early Supplier Engagement
3	Professional	Environmentalist or equivalent with a minimum 5 years experience in relevant field	
2	Graduate	Graduate with approximately 0-5 years postgraduate experience	<ul style="list-style-type: none"> • Assisting professionals
1	Technician	No prescribed experience criteria	<ul style="list-style-type: none"> • Senior Technician/ CAD Operator / Technician • Data entry • General clerical tasks

Table 3 Lot 3 – Engineering Consultancy and related services

Grade	Title	Education and Experience	Likely Roles/Activities
5	Director/Associate Director /Partner Associate/Principal	Chartered Engineer (or equivalent) with extensive experience in technical and managerial aspects	<ul style="list-style-type: none"> • Director / Partner ultimately responsible for the project • Maintains an overview of several projects across your organisation • Overall project review • National Framework Manager • Principal Engineer
4	Senior Professional	Extensive management experience Chartered Engineer or equivalent, and minimum of eight years experience in relevant field	<ul style="list-style-type: none"> • Project Manager • Senior Engineer/ Engineer • CDM Co-ordinator • ECC Project Manager • Senior Environmental Specialist/ Environmental Specialist • Planning and/or review of technical aspects
3	Professional	Engineer or equivalent with a minimum 5 years experience in relevant field	<ul style="list-style-type: none"> • Technical Guidance of junior staff • Main technical input • Dedicated H&S personnel • Reservoir Engineer • Environmental Clerk of Works • Early Supplier Engagement • Coastal Engineer • MEICA Engineer • Geotechnical Engineer • Structural Engineer • Hydraulic Engineer • Economics advice (cost benefit analysis)
2	Graduate	Graduate with approximately 0-5 years postgraduate experience	<ul style="list-style-type: none"> • Assisting professionals
1	Technician	No prescribed experience criteria	<ul style="list-style-type: none"> • Senior Technician/ CAD Operator / Technician • Data entry • General clerical tasks

Table 4 Lot 4 – Asset delivery

Grade	Title	Education and Experience	Likely Roles/Activities - Services	Likely Roles/Activities - Works
5	Director / Associate Director / Partner Associate / Principal	Chartered Engineer with extensive experience in technical and managerial aspects	<ul style="list-style-type: none"> Director / Partner ultimately responsible for the project Maintains an overview of several projects across your organisation Overall project review National Framework Manager Principal Engineer 	<ul style="list-style-type: none"> Director / Partner ultimately responsible for the project Maintains an overview of several projects across your organisation Overall project review National Framework Manager
4	Senior Professional	Extensive management experience Chartered Engineer or equivalent, and minimum of eight years experience in relevant field	<ul style="list-style-type: none"> Project Manager Senior Engineer/ Engineer CDM Co-ordinator ECC Project Manager Senior Environmental Specialist/ Environmental Specialist Planning and/or review of technical aspects Technical Guidance of junior staff Main technical input Dedicated H&S personnel Reservoir Engineer Environmental Clerk of Works Early Supplier Engagement Coastal Engineer MEICA Engineer Geotechnical Engineer Structural Engineer Hydraulic Engineer Economics advice (cost benefit analysis) 	<ul style="list-style-type: none"> Project Manager Contracts Manager Planning and/or review of technical aspects Technical Guidance of junior staff Main technical input Site/Project Manager Quantity Surveyors Senior Estimator/Estimator Dedicated H&S personnel Site Engineer Agent/Sub-Agent Programme Management Early Supplier Engagement
3	Professional	Engineer or equivalent with a minimum 5 years experience in relevant field		
2	Graduate	Graduate with approximately 0-5 years postgraduate experience	<ul style="list-style-type: none"> Assisting professionals Graduate Engineer 	<ul style="list-style-type: none"> Assisting professionals
1	Technician	No prescribed experience criteria	<ul style="list-style-type: none"> Senior Technician/ CAD Operator / Technician Data entry General clerical tasks 	<ul style="list-style-type: none"> Senior Technician/ CAD Operator / Technician Data entry General clerical tasks

Appendix 3 to Schedule 7

Items included in the Lot 1 – 4 rates

INCLUDED in Rates – Core Teams	INCLUDED in Rates – Lot 4 only	NOT INCLUDED in Rates
<ul style="list-style-type: none"> • Collating benchmarking and Performance data • Proposals as per the arrangements for Allocation of work • Hosting EA Audits • All reporting requirements not specified in the opposite column • All company overheads including training Management of framework including: <ul style="list-style-type: none"> • All invoicing and payment activities • Dissemination and implementation of new framework procedures • Attendance at Director Level, Framework Management Level and Regional level for all Consultant employees who attend these meetings (as detailed in Framework Management Schedule) • Any sub groups arising out of the above groups • All meetings and activities which contribute to Supplier Development • Any Best Practice Initiatives, e.g. Standard Designs, Specialist sub groups Other <ul style="list-style-type: none"> • Profit • Salary • Special Allowances • Absence due to Sickness • Absence due to Holidays including statutory • Absence due to Training • Travelling to and from place of work from home or temporary accommodation 	<ul style="list-style-type: none"> • As per detailed in the column to the left for Core Teams, plus the following for non Core teams and Construction rates: <p>Personnel (including site) rate to include but not limited to:</p> <ul style="list-style-type: none"> • Salary • Special Allowances • Absence due to Sickness • Absence due to Holidays incl statutory • Absence due to Training • Travelling to and from place of work from home or temporary accommodation • Company car / van or allowances (including all associated fees & maintenance) • Company Mobile phones • Company IT (laptops/ computers / software / licences / support etc) • Medical Examinations • Protective Clothing • Meeting Legal Requirements - National Insurance • Meeting Legal Requirements - CITB levy & Other Training • Meeting Legal Requirements - Employers Liability Insurance • Recruitment fees • Redundancy provision Superannuation and Life Assurance • Training (internal or external) • Private Health Care Provision • Pension • Telephone and fax charges 	<ul style="list-style-type: none"> • Effective working hours worked by technical staff producing <i>services</i> of benefit to the contract being undertaken for the Environment Agency at that time. • Profit, Overhead and Insurances for the purposes of Contractor Fee (Lot 4 only) • Expenses (as detailed by individual contract documentation)

INCLUDED in Rates – Core Teams	INCLUDED in Rates – Lot 4 only	NOT INCLUDED in Rates
<ul style="list-style-type: none"> • Company car / van or allowances (including all associated fees & maintenance) • Company Mobile phones • Company IT (laptops/ computers / software / licences / support etc) • Medical Examinations • Protective Clothing • Meeting Legal Requirements - National Insurance • Meeting Legal Requirements - CITB levy & Other Training • Meeting Legal Requirements - Employers Liability Insurance • Recruitment fees • Redundancy provision Superannuation and Life Assurance • Training (internal or external) • Private Health Care Provision • Pension • Telephone and fax charges • Postage • Printing and copying 	<ul style="list-style-type: none"> • Postage • Printing and copying 	

Appendix 4 to Schedule 7

Expenses policy

Explanatory note

Background	We must ensure that all expense claims are reasonable and proportionate and would not expose the Environment Agency to criticism. This document outlines the principles and guidance of the key elements of the Environment Agency's Business Expenses Policy which are applicable to the WEM suppliers.
Desired outcomes	Employees make eligible claims using the correct procedures. Fewer queries received.
Audience	All WEM suppliers.
Principles	<ol style="list-style-type: none">1. Claims must not give rise to, or give the appearance of giving rise to, an improper financial benefit to employees or anyone else.2. Claims must not be open to an interpretation which could risk damage to our reputation.3. Employees must not claim for items that could be perceived as extravagant or luxurious.4. Claims must support employees in carrying out their job, only where there is no alternative to achieve the objective in a different way with reduced or nil expense.5. Claims must be supported by receipts (except specifically where its agreed they are unnecessary, e.g. 'protected travelling officers').6. Our expenses policy requires that all employees are careful with taxpayers' money and spend it to best effect.7. Employees must be comfortable that their claims may be available to the public and can be defended as necessary in this context.

Travel

1. Where possible, public transport must be used. Train travel will be standard class. If standard class seats are not available you may upgrade to first class seats in the following circumstances; a long journey, you need to work while you travel, or you have a physical disability. Confidential telephone calls must not be made on public transport, and they are not a justification for travelling first class. Refer to the Environment Agency hierarchy of travel decision making and the IEM green transport pages. Advance booking should be used where possible.
2. Taxis or minicabs may only be used if there are no reasonable public transport or pedestrian alternatives (for example between a taxi station and office), there is particularly inclement weather or for reasons of health, safety and wellbeing. Taxi fares must be paid for in cash where possible.
3. Air and sea fares can be claimed at standard class rates on authorised business travel subject to the following restrictions:-
 - travel by air is not ordinarily permitted for journeys within England and Wales
 - travel by air is not permitted for journeys between England and Paris, Brussels, or other Eurostar destinations
 - travel by air to and from Scotland will be challenged by Directors as there are viable train options to many Scottish locations
 - all requests for air travel must have a good business justification. They will be personally scrutinised, and approved or declined, by Directors.

Exceptions to all of the above points may be authorised by a Director.

4. Mileage will be reimbursed to employees authorised to use their own car for Environment Agency business; this is known as 'casual car travel'. Mileage between home and the normal place of work cannot be claimed. Authorised travel from home to normal place of work, on a day not normally worked, must be claimed as a taxable benefit. Authorised business mileage will be reimbursed at the Environment Agency's casual car rate. Rates are subject to change. There are limitations on casual car mileage that can be claimed.

- No additional mileage rate can be claimed for carrying passengers.
- Car share where possible.

Accommodation

1. Hotel accommodation should be arranged in advance.
2. When the cost of dinner is incurred during an authorised overnight stay in a hotel, the guideline expenditure is £25 including a drink. Anything excessively above this is at the individual's expense.
3. No mini bar expenses can be claimed.
4. No reimbursement for newspapers and incidentals.

- Subsistence**
1. Subsistence is intended to cover the actual cost of meals incurred by employees whilst away from their normal or regular pattern of work, which exceed those that would normally have been incurred. Snacks and drinks between meals whilst travelling on business will be reimbursed within reasonable limits. Daily subsistence must be claimed on an 'actuals' basis, against receipts, within the following limits:
 - Breakfast = £5.00 (guideline expenditure) when the journey starts 1.5 hours before normal leaving time
 - Lunch = £5.00 (guideline expenditure). Claims for lunch cannot be made if the employee is away from normal place of work for one day or for the first day of multiple days away from normal place of work.
 - Dinner/evening meal, not associated with an overnight stay = £10.00 (guideline expenditure).
 2. Dinner can be claimed when the journey continues at least 2.5 hours after normal finish time. Refer to the 'Accommodation' section above for dinner allowance for employees required to stay overnight on business (overnight accommodation tariffs may include breakfast).
 3. Employees working from any Environment Agency office/base must provide their own lunch, even if this is not their normal place of work.
 4. See also hospitality below.
- Off site meetings**
- Off site meetings must have a very clear reason for not being held at Environment Agency premises or the suppliers' premises.
- Other business expenditure**
- If VAT is being claimed then receipts must display a VAT number. If VAT is not being claimed, any proof of purchase can be used.

Schedule 8 Supplier Incentives

1. The decision on incentive arrangements for specific Work Packages, Package Orders and Time Charge Orders, will be made within individual Project Procurement Strategies and communicated to the *Supplier* within tender documentation for the Work Package, Package Order or Time Charge Order.

Overview of Proposed Arrangements

2. There will be two main routes by which contractual incentive arrangements may operate;
 - a. "Contract Target Cost Model". In contracts where NEC Option C is used, the target cost, where appropriate, may include other costs which the *Supplier* could significantly influence, (e.g. landowner compensation payments, service diversion costs) as well as the price for the works;
 - b. "Programme Level Incentive Arrangements" for projects where the NEC Option C is used within a specific programme of projects. In this instance, a portion of *Supplier* gain-share would be held back by the *Employer* to mitigate *Employer* pain-share in projects elsewhere within the specific programme.
3. Payment of *Supplier* gain-share may be conditional upon meeting performance thresholds specified in individual contracts, for example:
 - a. Achievement of efficiency savings
 - b. Health, Safety and Environmental performance
 - c. Delivery within agreed programme
 - d. Other specified performance targets.

Contract Target Cost Model

4. This model is applicable where NEC Option C contract is used.
5. The 'share range' for Pain/Gain detailed in the following table will be applied and will be standard across all Lots and contract type (i.e. consultancy and construction contracts).

Share range	Supplier Share percentage
Less than 85% (of agreed Contract Target)	0%
From 85% to 115%	50%
Greater than 115%	100%

6. The *Supplier* may be required to share pain or gain (in proportion of their contract value to the overall project value) against a target of wider project costs. Examples of wider project costs which may be reflected in the target would be:
 - a. Design
 - b. Construction
 - c. Service diversion

- d. Landowner compensation
 - e. Other costs which the *Supplier* may significantly affect.
7. The *Employer* will determine which wider project costs (mentioned in 6 above) will be included in the Project Target Cost prior to issue of tender documents.

Programme Level Incentive arrangements

8. There are significant benefits to be obtained if the *Employer* can achieve far greater levels of collaboration between Suppliers engaged on delivery of a programme of projects, and between Suppliers and *Employer*. The *Employer* will therefore pilot the use of Programme Level Incentive Arrangements. These arrangements may be rolled out more widely later depending on the level of benefits delivered. Programme level incentive arrangements will be restricted to projects with a single source of funding.
9. The mechanism by which Programme Level Incentive Arrangements would be operated is presented diagrammatically below in Figure 1.
10. Programme Level Incentive arrangements would:
- a. Apply to specific, defined programmes of projects within the overall *Employer* programme.
 - b. Be applicable where NEC Option C contract is used.
 - c. Pay the *Supplier* one third of their contract gain-share on certification by the ECC PM. Two thirds is retained by the *Employer* within a programme incentive fund to cover Employer exposure to pain-share on projects elsewhere within the specific programme. Individual *Supplier* exposure to pain-share on projects will not be reduced by the programme incentive fund.
 - d. Where the programme incentive fund is reduced by payments to cover *Employer* exposure to pain-share, then final payment of gain-share due to Suppliers will be pro-rata to the *Supplier's* contribution to the programme incentive fund.
 - e. Release any remaining retained gain-share, after covering any *Employer* exposure to pain share, to Suppliers at the end of each year.
 - f. Interest will not be paid on retained gain-share.
11. The tender documentation for a Work Package, Package Order and/or Time Charge Order will state:
- a. If programme level incentive arrangements are to apply and if so it will set out the full terms of those incentive arrangements:
 - b. details of other projects already let, or planned to be let within the programme, likely total size of that programme and other key details
 - c. Other Suppliers also working on the programme (if any).

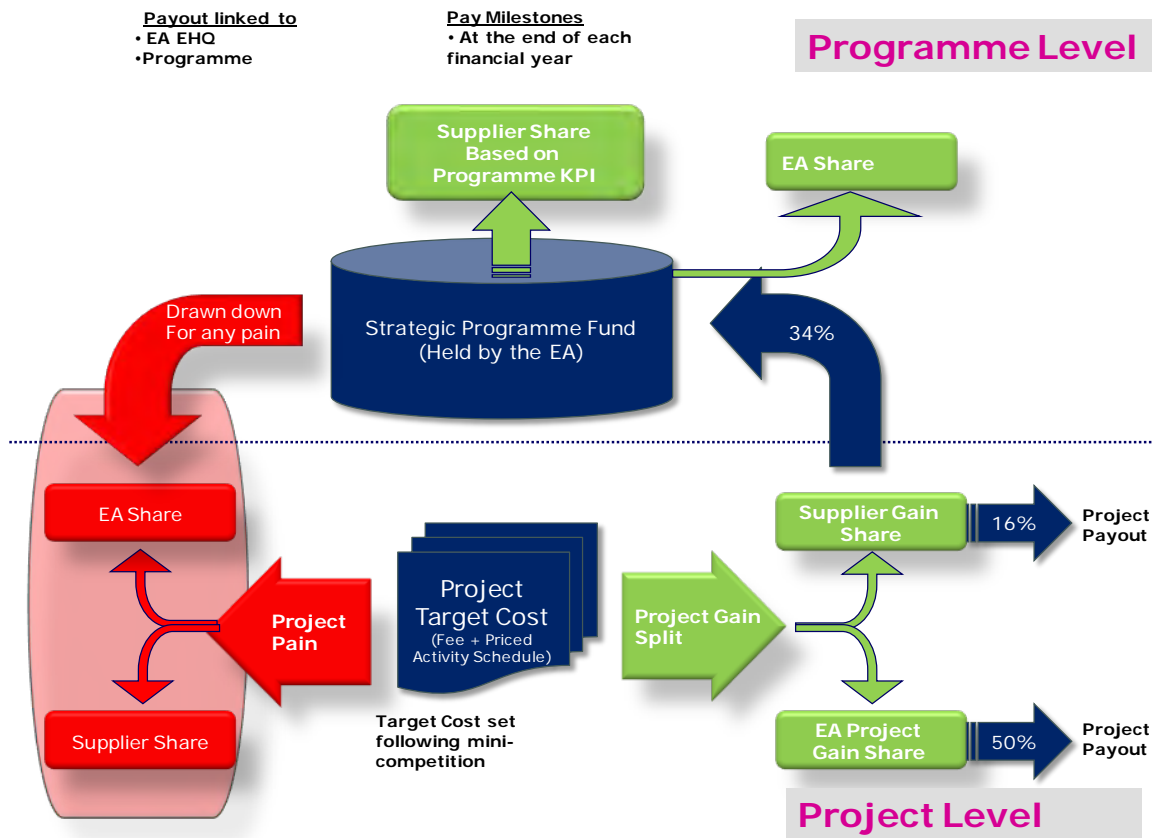


Figure 1 - Programme Level Incentive arrangements

Schedule 9 Payment and Audit Arrangements

1. A fee note or application for payment shall be prepared by the *Supplier* for each Package Order, Work Package or Time Charge Order on a monthly basis where services or works have been provided during the preceding month. These will be submitted electronically through Asite between the first and fifteenth of the month and will on average take seven calendar days for approval, provided details are correct. When approved, suppliers may issue an invoice which will be paid within ten days.
 - a. In respect of ECC and PSC option A contracts, the fee note shall include the price for the works or services provided to date in accordance with the conditions of that contract.
 - b. In respect of PSC option C and E contracts, the fee note shall provide full details of time charge, including sub consultants not included in staff rates. Time charges shall be presented for each relevant activity identified in the cost breakdown structure of the Project Cost Tool, with staff names and hours worked against agreed rates. Sub consultants shall be separately identified and detailed.
 - c. In respect of all contracts awarded under options C & E of the ECC, the *Employer's Project Manager* has the responsibility to assess the amount due to the *Supplier* at each assessment date. To enable this, the *Supplier* must submit an application for payment to the Project Manager for each relevant activity identified in the cost breakdown structure of the Project Cost Tool. At the same time as submitting an application for payment, the *Supplier* will also prepare and submit an accurate forecast of the cost for the whole of the works, with explanation of any changes since the previous forecast.
2. For all contract types and all contract options, each application for payment/fee note must be accompanied by a breakdown of both the cost incurred and the forecast cost to complete the contract in accordance with the Project Cost Tool cost breakdown structure.
3. The *Supplier* shall give the *Employer* full access, on an ongoing basis, to all of the *Supplier's* financial, time recording and accounting records in relation to each contract, including, without limitation, any financial, accounting or contractual records, documents and invoices relating to any sub-contractors. All records shall be sufficient in quality and quantity to permit the *Employer* to confirm that all costs incurred by the *Supplier* have been necessarily and properly incurred in performing the obligations under this Framework Agreement and any and all each Package Order, Work Package or Time Charge Order.
4. The *Employer* wishes to avoid or keep to a minimum any additional costs for the *Supplier* associated with record keeping and provision of information to the *Employer*. The *Employer* believes that the *Supplier* as part of normal business practice will keep the records and information required by the *Employer*. The *Employer*, in consultation with the *Supplier*, will develop a regime for auditing costs based on selective and random checks carried out at the location where it is most cost effective for the checks to be carried out.
5. The *Employer* expects that the sample checks will generally confirm the *Supplier's* claims for payment. Where discrepancies of a significant nature emerge the *Employer* will view this as a serious matter and this may result in suspension from or termination of the Framework Agreement (clause Z15). The *Employer* reserves the right to charge the *Supplier* for the cost of any additional checking necessitated as a result of the discovery of significant discrepancies during the sample checking process.
6. The *Employer* is a stakeholder in the Construction Sector Transparency Initiative (<http://www.constructiontransparency.org>) and will publish project details (contract value, out-turn cost, delivery to time, etc) in line with the principles of that Initiative.

Schedule 10 Project Cost Tool

1. The *Employer* will use a Project Cost Tool (PCT) on this Framework Agreement. This Schedule 10 is an overview of what the PCT is, how it works, what the *Employer* will use PCT for and the data required from the *Supplier*. This information is not intended to be a comprehensive working guide and it will not cover all aspects, functionality or outputs. The PCT will not be used for all Work Packages, Package Orders and/or Time Charge Orders. The *Supplier* will be informed prior to the award of a Work Package, Package Order and/or Time Charge Order that the PCT provisions of this Framework Agreement will apply.

Description of the PCT

2. The PCT is primarily a database storing information on capital projects delivered by or for the *Employer's* organisation.
3. The database contains a specifically designed cost breakdown structure (CBS) to store cost information at different levels of detail for its optimal use by the *Employer*. In addition to the cost information, a significant amount of contextual detail about the project, its assets and attributes is also stored.
4. The purpose of the CBS and the associated contextual information is to provide a clear and consistent approach to capturing, storing and utilisation of the data. This data covers the complete cost associated with the project (i.e. *Employer*, *Supplier*, consultants, contractors & other third parties) and through all project stages (i.e. from initial assessment through to commissioning & handover).
5. The PCT is being developed as an in-house tool to integrate with the *Employer's* existing processes, tools and data and is owned by the *Employer* and is not reliant on third parties to maintain or run the database.

How the PCT works

6. The PCT will be a bespoke module within the *Employer's* Asite platform.
7. The data for the PCT originates from several sources but is all entered or uploaded via Asite. A significant proportion of the data and information within PCT is from the Project and Project Management Tool module within Asite. Other information is obtained from consultants and contractors, project data capture forms or other Asite modules. Guidance notes and coverage rules have been developed to promote consistency and accuracy of the data.
8. Although the data is held within Asite the data is only used after it has been verified.
9. The available data within PCT is structured so that specific or general aspects of the project data can be chosen for analysis or reporting. Therefore depending on the analysis or report to be conducted the appropriate projects can be identified through filtering and selection options.
10. With appropriate projects filtered, identified and selected a range of reports can be run depending on the type of output that is required. These outputs can be appropriately adjusted to bring all data points to the same price time basis through the use of indices.
11. Benchmarking is a primary function of the output reports and can be used to compare specific individual components of projects or complete projects by various drivers and outputs. Through the use of statistical analysis the data can similarly be used to create cost models for a variety of project types or individual project aspects.

What the *Employer* will use PCT for

12. Through PCT the *Employer* has an in-house capability to cost projects before engaging with the market. This knowledge will inform decisions on project option appraisal, procurement strategies, commercial & contractual arrangements, contract negotiations, efficiency targets, supply-chain performance management, change management and post-project appraisals. We will implement use of PCT on a phased basis as outlined below. The *Employer* will advise the *Supplier* when Phases are to start and finish.

- a. Phase 1 - Use PCT to help to benchmark *Supplier* tenders
- b. Phase 2 - Use PCT to set approved project budgets
- c. Phase 3 - Use PCT to set maximum acceptable tender prices.

Role of *Suppliers* in providing project information

13. Obtaining reliable and consistent project information for the PCT is very important to the *Employer*. The PCT will collect information automatically from PPMT/Asite and members of our supply chain will place the necessary supporting details or breakdowns required from them directly into the Asite Contract Management & Administration Tool. Current drafts of the information required from consultants and contractors (Data Capture Forms) are attached as appendices. These documents should be regarded as indicative of the information required as both the data to be collected and the formats will be reviewed and developed over the life of this Framework Agreement. It is likely that information will be input directly to a web form in Asite rather than an excel spreadsheet.
14. The primary source of information for the PCT is completed Work Packages, Package Orders and Time Charge Orders, hence finalised information from *Suppliers* will be required for each of their completed Work Packages, Package Orders and Time Charge Orders at the completion of each. In addition, in order to provide early information and improve coverage of the database, interim information from *Suppliers* will also be required at Gateway 1 (Business Case) and Gateway 3 (Award of Construction Contract) incorporating estimated/projected costs.
15. In order to encourage timely and accurate provision of information for the PCT it is a requirement that if data is not provided within one month of Completion (or Gateway date in the case of interim information) of a Work Packages, Package Orders and Time Charge Orders, payment to the *Supplier* for that contract will be withheld until data is received. If data supplied is found to be of unacceptable quality payment to the *Supplier* for that contract will be withheld until data of an acceptable quality is provided.

Appendices

Appendix 1 to Schedule 10 PCT Data Capture Form (Consultant version)

Appendix 1 to Schedule 10 SECTION 3
Project Cost Tool Data Capture (Consultants)

Input Level			
Project Value			£REF1
Consultancy Costs			£0.00
Construction Value			£REF1
Overall duration			
Project output measure Quantity			
Unit Cost (Project)			

Total Quantity (Hours/Weeks)		Weeks	£	0.00
Consultancy support		Weeks	0	£ 0.00
Consultants	Project Strategy Stage works	Weeks	0	£ 0.00
	S0-Preparation of Project Planning Contract / Full Tender	Weeks	-----	£ -----
	S2-Project Management	Weeks	-----	£ -----
	S3-Appraisal Work (Option Evaluation/ S&B production)	Weeks	-----	£ -----
	S4-Specialist Surveys or Investigations	Weeks	-----	£ -----
	S5-Benefit Assessment / Economic Appraisal	Weeks	-----	£ -----
	S6-Consultation - External Interested Parties	Weeks	-----	£ -----
	S7-Mathematical Modelling	Weeks	-----	£ -----
	S8-Environmental - Assessment (SEA/EIA) & consultation	Weeks	-----	£ -----
	S10-H&S - CDM Co-ordinator Duties (if provided as part of this	Weeks	-----	£ -----
Consultants	Project Appraisal Stage works	Weeks	0	£ 0.00
	AP0-Preparation of Project Planning Contract / Full Tender	Weeks	-----	£ -----
	AP2-Project Management	Weeks	-----	£ -----
	AP3-Appraisal Work (Option Evaluation / Development /	Weeks	-----	£ -----
	AP4-Specialist Surveys or Investigations	Weeks	-----	£ -----
	AP5-Benefit Assessment / Economic Appraisal	Weeks	-----	£ -----
	AP6-Consultation - External Interested Parties	Weeks	-----	£ -----
	AP7-Mathematical Modelling	Weeks	-----	£ -----
	AP8-Environmental - Assessment (SEA/EIA) & consultation	Weeks	-----	£ -----
	AP10-H&S - CDM Co-ordinator Duties (if provided as part of this	Weeks	-----	£ -----
	S10-H&S - CDM Co-ordinator Duties (if provided as part of this	Weeks	-----	£ -----
Consultants	Project Design Stage works	Weeks	0	£ 0.00
	DE0-Preparation of Project Planning Contract / Full Tender	Weeks	-----	£ -----
	DE2-Project Management	Weeks	-----	£ -----
	DE4-Specialist Surveys or Investigations	Weeks	-----	£ -----
	DE5-Consultation - External Interested Parties	Weeks	-----	£ -----
	DE7-Mathematical Modelling	Weeks	-----	£ -----
	DE8-Environmental - Assessment (SEA/EIA) & consultation +	Weeks	-----	£ -----
	DE10-Detailed Design	Weeks	-----	£ -----
	DE13-Contract Documentation	Weeks	-----	£ -----
	DE10-H&S - CDM Co-ordinator Duties (if provided as part of this	Weeks	-----	£ -----
Consultants	Project Construction (& post construction) Stage works	Weeks	0	£ 0.00
	CO0-Preparation of Project Planning Contract / Full Tender	Weeks	-----	£ -----
	CO2-Project Management	Weeks	-----	£ -----
	CO8-Landscape design supervision and maintenance	Weeks	-----	£ -----
	CO10-Detailed Design during construction	Weeks	-----	£ -----
	CO13-Contract Administration (ECC PM duties only)	Weeks	-----	£ -----
	CO15-Site Supervision	Weeks	-----	£ -----
	CO10-H&S - CDM Co-ordinator Duties (if provided as part of this	Weeks	-----	£ -----
Consultants	OTHER PROFESSIONAL SERVICES	Weeks	0	£ 0.00
	OS0-Preparation of Project Planning Contract / Full Tender	Weeks	-----	£ -----
	OS15-Reservoir Supervision Duty	Weeks	-----	£ -----
	OS16-Planning Advice	Weeks	-----	£ -----
	OS17-Emergency Response	Weeks	-----	£ -----
	OS18-General Professional Advice	Weeks	-----	£ -----
	OS10-H&S - CDM Co-ordinator Duties (in house ncps RCDMC	Weeks	-----	£ -----
	OS20-Cost / Contract Advice	Weeks	-----	£ -----
NCMF (Cost Management)		Weeks	0	£ 0.00
	Project Strategy (includes option identification, consultations,	Weeks	-----	£ -----
	Project Appraisal (includes option development, outline	Weeks	-----	£ -----
	Project Design (includes detailed design, consultations, modelling,	Weeks	-----	£ -----
	Construction & post construction	Weeks	-----	£ -----
	Post Project (to be established if significant / required)	Weeks	-----	£ -----
NEC PM Provision (WEM / NCMF)		Weeks	0	£ 0.00
	Project Strategy (includes option identification, consultations,	Weeks	-----	£ -----
	Project Appraisal (includes option development, outline	Weeks	-----	£ -----
	Project Design (includes detailed design, consultations, modelling,	Weeks	-----	£ -----
	Construction & post construction	Weeks	-----	£ -----
	Post Project (to be established if significant / required)	Weeks	-----	£ -----
Ground Investigation - desktop works (NSIF)		Weeks	0	£ 0.00
	Project Strategy (includes option identification, consultations,	Weeks	-----	£ -----
	Project Appraisal (includes option development, outline	Weeks	-----	£ -----
	Project Design (includes detailed design, consultations, modelling,	Weeks	-----	£ -----
	Construction & post construction	Weeks	-----	£ -----
	Post Project (to be established if significant / required)	Weeks	-----	£ -----
Ground Investigation - physical field works (NSIF)		Weeks	0	£ 0.00
	Project Strategy (includes option identification, consultations,	Weeks	-----	£ -----
	Project Appraisal (includes option development, outline	Weeks	-----	£ -----
	Project Design (includes detailed design, consultations, modelling,	Weeks	-----	£ -----
	Construction & post construction	Weeks	-----	£ -----
	Post Project (to be established if significant / required)	Weeks	-----	£ -----
Surveys (Non-NSIF)		Weeks	0	£ 0.00
	Project Strategy (includes option identification, consultations,	Weeks	-----	£ -----

Feb

Appendix 2 to Schedule 10 PCT Data Capture Form (Contractor version)

Appendix 3 to Schedule 10 PCT Data Capture Form (Design & construct version)

Appendix 2 to Schedule 10 SECTION 3
Project Cost Tool Data Capture (Design and Build)

Input Level				
Project Value				£0.00
Consultancy Costs				£0.00
Construction Value				£0.00
Overall duration				
Project output measure Quantity				
Unit Cost (Project)				

Total Quantity (Hours/Weeks)	Weeks	£	0.00
Consultancy support	Weeks 0	£	0.00
Consultants Project Strategy Stage works	Weeks 0	£	0.00
S0-Preparation of Project Planning Contract / Full Tender	Weeks	£	
S2-Project Management	Weeks	£	
S3-Appraisal Work (Option Evaluation/ SAR production)	Weeks	£	
S4-Specialist Surveys or Investigations	Weeks	£	
S5-Benefit Assessment / Economic Appraisal	Weeks	£	
S6-Consultation - External Interested Parties	Weeks	£	
S7-Mathematical Modelling	Weeks	£	
S8-Environmental - Assessment (SEA/EIA) & consultation	Weeks	£	
S19-H&S - CDM Co-ordinator Duties (if provided as part of this)	Weeks	£	
Consultants Project Appraisal Stage works	Weeks 0	£	0.00
AP0-Preparation of Project Planning Contract / Full Tender	Weeks	£	
AP2-Project Management	Weeks	£	
AP3-Appraisal Work (Option Evaluation / Development /	Weeks	£	
AP4-Specialist Surveys or Investigations	Weeks	£	
AP5-Benefit Assessment / Economic Appraisal	Weeks	£	
AP6-Consultation - External Interested Parties	Weeks	£	
AP7-Mathematical Modelling	Weeks	£	
AP8-Environmental - Assessment (SEA/EIA) & consultation	Weeks	£	
AP19-H&S - CDM Co-ordinator Duties (if provided as part of this)	Weeks	£	
S19-H&S - CDM Co-ordinator Duties (if provided as part of this)	Weeks	£	
Consultants Project Design Stage works	Weeks 0	£	0.00
DE0-Preparation of Project Planning Contract / Full Tender	Weeks	£	
DE2-Project Management	Weeks	£	
DE6-Specialist Surveys or Investigations	Weeks	£	
DE5-Consultation - External Interested Parties	Weeks	£	
DE7-Mathematical Modelling	Weeks	£	
DE8-Environmental - Assessment (SEA/EIA) & consultation +	Weeks	£	
DE10-Detailed Design	Weeks	£	
DE11-Contract Documentation	Weeks	£	
DE19-H&S - CDM Co-ordinator Duties (if provided as part of this)	Weeks	£	
Consultants Project Construction (& post construction) Stage works	Weeks 0	£	0.00
CO0-Preparation of Project Planning Contract / Full Tender	Weeks	£	
CO2-Project Management	Weeks	£	
CO8-Landscape design supervision and maintenance	Weeks	£	
CO10-Detailed Design during construction	Weeks	£	
CO12-Contract Administration (ECC PM duties only)	Weeks	£	
CO13-Site Supervision	Weeks	£	
CO19-H&S - CDM Co-ordinator Duties (if provided as part of this)	Weeks	£	
Consultants OTHER PROFESSIONAL SERVICES	Weeks 0	£	0.00
OS0-Preparation of Project Planning Contract / Full Tender	Weeks	£	
OS15-Reservoir Supervision Duty	Weeks	£	
OS16-Planning Advice	Weeks	£	
OS17-Emergency Response	Weeks	£	
OS18-General Professional Advice	Weeks	£	
OS19-H&S - CDM Co-ordinator Duties (in house ncpm RCDMC)	Weeks	£	
OS20-Cost / Contract Advice	Weeks	£	
NCMF (Cost Management)	Weeks 0	£	0.00
Project Strategy (includes option identification, consultations,	Weeks	£	
Project Appraisal (includes option development, outline	Weeks	£	
Project Design (includes detailed design, consultations, modelling,	Weeks	£	
Construction & post construction	Weeks	£	
Post Project (to be established if significant / required)	Weeks	£	
NEC PM Provision (NECA / NCMF)	Weeks 0	£	0.00
Project Strategy (includes option identification, consultations,	Weeks	£	
Project Appraisal (includes option development, outline	Weeks	£	
Project Design (includes detailed design, consultations, modelling,	Weeks	£	
Construction & post construction	Weeks	£	
Post Project (to be established if significant / required)	Weeks	£	
Ground investigation - desktop works (NSIF)	Weeks 0	£	0.00
Project Strategy (includes option identification, consultations,	Weeks	£	
Project Appraisal (includes option development, outline	Weeks	£	
Project Design (includes detailed design, consultations, modelling,	Weeks	£	
Construction & post construction	Weeks	£	
Post Project (to be established if significant / required)	Weeks	£	
Ground investigation - physical field works (NSIF)	Weeks 0	£	0.00
Project Strategy (includes option identification, consultations,	Weeks	£	
Project Appraisal (includes option development, outline	Weeks	£	
Project Design (includes detailed design, consultations, modelling,	Weeks	£	
Construction & post construction	Weeks	£	
Post Project (to be established if significant / required)	Weeks	£	
Surveys (Non-NSIF)	Weeks 0	£	0.00
Project Strategy (includes option identification, consultations,	Weeks	£	

Schedule 11 Minimum Technical Requirements

1. Minimum Technical Requirements includes Standard Scopes, Standard Designs and Standard Specifications.
2. The *Supplier* is obliged to use Minimum Technical Requirements unless they can demonstrate clear benefits from an alternative approach. The *Supplier* shall feedback any comments for improvements through the Framework Management communication channels.
3. Any costs associated with the use and development of Minimum Technical Requirements on projects will be recovered through Work Package, Package Order or Time Charge Order as set out in each particular agreement. The *Supplier* is expected to contribute to development through Framework Management meetings and engagement on specific task groups and projects where invited or commissioned.
4. The *Supplier's* use of and contribution to Minimum Technical Requirements will be monitored as part of the Performance Assessment process.

Standard Scopes

5. We have a mandatory and uniform approach to writing briefs. These make the information available and duties required clear at the start of the commission.
6. Each phase of work - appraisal, detailed design and site supervision - has its own template. The sections of work are split up and each section gives the information already available for use, the work we require and the deliverables required to close out that section.
7. The standard templates can be found on Asite (Knowledge Management).

Standard Designs

8. The *Employer* is establishing a mandatory and standardised approach to the delivery of projects. This will increase project delivery efficiency by avoiding repetition in design and creating familiarity within the construction process.
9. Standardised approaches will apply to activities or products that are repeatable, through either design, construction or operational stages of a project. This will also yield benefits for cost estimation during the project evaluation stage through the approval and design stages.
10. The Standard Designs initiative is an ongoing project. It will be delivered in phases and improved upon during the life of this Framework Agreement.
 - a. Phase 1, now complete, was to draft low risk secondary items, such as headwalls and manholes. These are now available on Asite (Knowledge Management). In addition, we use Highways Agency standard designs for fences, gates etc, in series H of volume 3 of the Manual of Construction for Highway Works.
(see: <http://www.dft.gov.uk/ha/standards/mchw/vol3/section1.htm>)
 - b. Phase 2 will identify further areas where savings can be delivered, concentrating initially on design criteria, flood walls and ancillary equipment such as gates, ramps, copings and cladding. A set of designs for walls based on parametric designs will be produced. Each will come with design parameters and limits to show where each design is valid. This phase is due for roll out by the end of 2013.
 - c. Once the designs for phase 2 are published, we will evaluate the benefits of standardisation in other areas of our works.

Specification

11. The *Employer's* standard specification for works is based upon the Civil Engineering Specification for the Water Industry 7 (CESWI 7). A standard set of *Employer* clauses enhancing these to suit our works is available on Asite (Knowledge Management). This is currently being trialled and will be updated at intervals during the life of the Framework

Agreement. The *Supplier* will be notified from time to time of any changes. CESWI 7, supplemented by our own clauses will form the standard specification for all our construction work. Any site specific clauses for the individual schemes will be included within each Work Package, Package Order or Time Charge Order.

12. All designs will be compliant with the standard Specification; all construction work will be compliant with the standard Specification.
13. Exceptions can only be made to the use of the Standard Specification on any particular Work Package, Package Order or Time Charge Order, by reference to the scheme Project Manager and the Technical Manager, approval of the exception will take up to 4 weeks, and is only approved when this approval is received in writing from the Technical Manager.

Schedule 12 Performance Management

1. The *Employer* will gather framework management information to inform *Supplier* development and work allocation. The *Supplier* will provide information on sustainability and efficiency. The *Employer's* Project Management function will collect data on project performance, delivery of targets and *Supplier* behaviours.
2. The *Supplier* shall submit data quarterly for the sustainability scorecard, environmental KPIs and efficiency registers.
3. We will measure *Supplier* performance using various metrics, to develop a Supplier Performance Score, under the following headings:
 - a. Time
 - b. Cost
 - c. Quality of project deliverables
 - d. Sustainability
4. The performance data will be objective and evidence based.
5. Supplier Performance Scores will be used to develop Supplier Development Action Plans. The parameters that we intend to use are included in Appendix 1 to Schedule 12.
6. Following an initial period of up to 12 months where we will be collating data, The *Employer* shall use the Supplier Performance Scores to assist it in considering whether a particular supplier is capable of performing particular Work Packages, Package Orders and Time Charge Orders.
7. Where the *Supplier's* performance assessment scores fall below a certain threshold (to be agreed between the Employer and Suppliers) it may be suspended from the Framework Agreement pursuant to Z8.
8. The Supplier Performance Score threshold will be developed and advised to the *Supplier* when sufficient performance data is available.
9. The *Supplier* would be able to bid again for projects when performance issues have been satisfactorily addressed.
10. Behavioural information and client satisfaction scores will be collected and will be reviewed at Supplier Development meetings (see Schedule 13).

Performance Measurement

11. The table below is presented for consideration of how we intend to measure performance through the framework. This will be updated during the first 12 months of framework operation

Topic Area	Criteria	Score	Applicability			Notes
			Type of work	Lot within WEM	Client (ncpms, Area, LA))	
1.0 Cost	1.1 Is current contract out-turn estimate equal to or less than original contract value? (yes/no)	1	All	All	All	Note this measure does not include compensation events to encourage suppliers to check that scope is clear from the outset.
	1.2 Has project delivered efficiency savings within target for year? (yes/no)	1	All	all	EA	Need to set efficiency targets for each contract (may be zero) to ensure achievement of SR2010 spending targets
	1.3 Is current contract out-turn estimate within 50%ile defined in Form A or Project Appraisal Report	1	FCR M	All	Ncpms, possibly wider	
2.0 Time	2.1 Is current contract completion date within agreed programme at time of contract award (yes/no)	1	All	All	All	See note to 1.1
	2.2 Have all contract project milestones been met? (yes/no)	1	All	All	All	
3.0 Sustainability	3.1 Have any RIDDOR events occurred in carrying out the contract? (yes/no)	1	All	All	All	
	3.2 Have any level 1/2 environmental incidents occurred? (yes/no)	1	All	All	All	
	3.3 Have project sustainability and environmental targets, agreed by team at	1	All	All	All	These targets would be specific to each project, would all be

Topic Area	Criteria	Score	Applicability			Notes
			Type of work	Lot within WEM	Client (ncpms, Area, LA))	
	the start, all be met?					measurable and objective. May include the following - use of local labour Use of local apprentices All timber purchased in accordance with EAs timber policy recycled aggregates waste to landfill
	3.4 did the site receive a Considerate Contractors score of at least 34?	1	All	Lot 4	EA	
4.0 Deliverables	4.1 Have all project deliverables been delivered with zero defects by time indicated on project programme? (yes/no)	1	All	All	All	
	4.2 was business case approval given first time of submission?'	1	FCR M	All	EA	
	4.3 Has supplier delivered all of their agreed proposals from their original tender proposal		All	All	ALL	

Schedule 13 Framework Management

- The *Employer* and the Suppliers will work together in the operation of the Framework Agreement and in the successful delivery of Work Packages, Package Orders and Time Charge Orders. This will entail working together on a one to one basis, but also in conjunction with the Suppliers and Others.

WEM Management Forums

Title	Frequency	Attendees*
Supplier Conference	6 months (alternately web-based and at conference location in central England)	Up to 4 attendees per Supplier including at least one key supply chain representative (no limit if web based), <i>Employer</i> representatives.
Executive Management Board	Three times a year	Representatives from Others, Representatives from National Site Investigation Framework and National Cost Management Framework, Environment Agency Senior Managers.
Framework Management Team	Quarterly	Suppliers Framework Managers from across this Framework Agreement, NCMF and NSIF Frameworks, Environment Agency: <ul style="list-style-type: none"> • Commercial Manager • Senior Procurement Manager • NEAS Commercial Manager • Health, Safety and Wellbeing Manager • Supplier Development Manager
Lot Management Meetings (per Lot)*	Quarterly	<i>Supplier</i> Lot Managers Environment Agency: <ul style="list-style-type: none"> • Commercial Services Manager • Procurement Manager • NEAS representative • H&S representative • Technical representative
Supplier reviews / development meetings	1 or 2 times per year	Framework Director National Framework Manager Technical Managers dependent upon key issues <i>Employer</i> Representatives
Sub-groups** (to progress such matters as commercial and performance management, health and safety and environmental issues)	Ad-hoc (est. total 6 – 8 days per year for each Supplier plus preparation time)	Appropriate technical experts
Regional Meetings to engage on local programmes and local delivery matters	Ad-hoc (estimated total 4 per year)	Environment Agency Business Team Manager and Local Representatives Supplier Core Team Representatives

Notes

- * Attendees and Lot Management arrangements will be reviewed and finalised post-award. Attendance will be proportionate and reflect the volume of work of each Lot. Depending on the total number of Suppliers and cross-over between the Lots there may be potential to combine Lot Management meetings either on an occasional or permanent basis.
- ** Set-up of these groups will be subject to the approval of the Environment Agency's Framework Manager. A relevant and clear scope, with defined outputs, will be key to approval being granted.

2. The *Supplier* shall nominate staff to fulfil the roles identified above:
 - a. Framework Director / Senior Manager
 - b. Framework Manager
 - c. Lot Manager(s) - if applying for multiple Lots, The *Supplier* can choose whether to have the same individual for one or more of the Lots.
3. The *Supplier* can also choose whether to have same individual for one or more of the above roles.
4. When circumstances arise that require the *Supplier* to seek to change their staff, nominated for the above positions, the *Supplier* is to advise the *Employer* and seek to identify a suitably qualified candidate. All replacements must be agreed with the Environment Agency.

Development meetings

5. There will be Development and Performance Review meetings with the *Supplier*, to review both the *Supplier's* and *Employer's* performance on the Framework Agreement and to identify development and performance improvement actions. The frequency of these meetings in the first year will be at least six monthly. Intervals between meetings shall not exceed twelve months.
6. The *Supplier* shall develop a Supplier Development Plan for each year of the term of the Framework Agreement which shall be agreed with the Environment Agency. The Supplier Development Plan shall address performance and development areas identified during the life of the Framework Agreement, and shall address how the *Supplier* will develop to deliver the *Employer's* Corporate Targets which themselves will change during the currency of the Framework Agreement.
7. The *Supplier* shall continually monitor progress against the Supplier Development Plan and shall amend the Supplier Development Plan if necessary to address new performance / development areas that arise during the term of this Framework Agreement.

Tool box talks

8. One Toolbox talk a month will be held via BT Live Meeting to share knowledge and best practice between the Employer and the Suppliers.
9. The *Supplier* is be required to contribute to these talks, both through representatives attending and communicating the information throughout their own organisation, and also by suggesting topics, providing information and leading some of the talks.
10. All costs for attending these meetings, and related activities, are not to be charged to the *Employer* and are considered to be included within the *Supplier's* overhead.

Schedule 14 Sustainability

1. In the pursuit of sustainable design and resource efficiency in general the *Supplier* shall ensure that they directly and through sub-contractors and other partners:
 - a. be efficient through design and engagement in early supplier engagement such that we make best use of available materials, minimise the volume of materials required, minimise wasted materials (i.e. adopt a zero waste principle as far as practicable) and design for passive/efficient operation.
 - b. use tools during design to help maximise resource efficiency e.g. [‘WRAP Designing out Waste Tool for Civils Projects’](#), the Environment Agency Construction Carbon Calculator and the [E21C Sustainable Materials Tool](#).
 - c. implement the ‘waste hierarchy’ through effective materials/waste Management Plans to maximise opportunities for reuse/recycling and to minimise waste sent to landfill. Re-use should be considered across the framework and from within the wider supply chain
 - d. seek to avoid using virgin, finite resources as far as practicable, and look to use materials and products that are from recycled or renewable sources.
 - e. seek to use materials that can be sourced locally and reduce carbon impact of transportation.
 - f. encourage innovation in order to deliver resource efficient, cost-effective and low carbon dioxide emission solutions, taking advantage of opportunities for standardisation, prefabrication and off-site manufacture
 - g. deliver projects to meet or exceed the *Employer’s* framework sustainability targets, evidence trends and improvement through input into the framework level Sustainability Scorecard.
 - h. ensure that our sustainability principles, including good diversity & equality practices are embedded within your supply chain contracts and compliance is monitored.
 - i. work with us and the wider industry to improve and develop best practice sustainability standards and support trials of innovative products and materials.
2. On all Lots the *Supplier* must:
 - a. Have an Environment Management System (EMS) accredited to the standard of ISO14001 or equivalent within 1 year of the commencement date. A staged approach to this standard will be acceptable for Small and Medium Enterprise’s (SME’s). They will be expected to achieve an EMS to Level 3 of the BS8555 standard or equivalent within 1 year of contract award and Level 6 by year 4. The *Employer’s* EMS is accredited to ISO14001 & EMAS standards and we encourage the *Supplier* to work to these standards within their own organisations.
 - b. Maintain an Environment Management System relevant to the requirements of the framework accredited to ISO14001 or equivalent standard throughout the duration of the framework. The accreditation must be undertaken by UKAS accredited auditors or equivalent.
 - c. Have a formal training plan in place for the development of their workforce; this must include training in their EMS and our Diversity and Equality policy requirements. The *Employer* offers a short online training session on our diversity and equality policy. Key staff (to be agreed between the parties) from the *Supplier* will be expected to attend a session within the first year of the Framework Agreement and cascade the information within their organisations and supply chain. The *Supplier* is required to report on the number of staff and sub-contractors who have received this training. See Appendix 1 to Schedule 14 for our Diversity and Equality Requirements.
 - d. On identification of a business need for a project, use the *Employer’s* Procurement Sustainability Risk Assessment or agreed template for each project to mitigate and manage sustainability risks and identify opportunities that are not already addressed through other tools and assessments throughout the life cycle of the project.

- e. Carry out an assessment by spend and sustainability risk of the key materials that they purchase on behalf of the *Employer*. The *Supplier* shall be able to report baseline data on 5 key agreed materials by the end of year 2 of the framework. The data will include as a minimum ; material type, whether it is virgin or recycled, country of origin, tonnage and spend. Once a baseline has been established the *Supplier* must report on this annually.
 - f. Consider applying for awards including the Civil Engineering Environmental Quality Assessment Award Scheme (CEEQUAL) whole project award for flagship projects.
 - g. Be compliant with relevant Government Buying Standards, providing evidence of compliance when requested.
 - h. Report, and demonstrate their commitment to, their use of Small and Medium Enterprises (SMEs) for at least 25% of spend through the framework. This is in support of the Government 2011 target. In Lot 4 we would anticipate the proportion of spend with SMEs to exceed 50%.
 - i. Use the [Contracts Finder](#) website to advertise any sub-contracting opportunities outside their established supply chain and consider targeting underrepresented groups to encourage a diverse and inclusive supply base.
 - j. Comply with Equality Act and be able to demonstrate that they ensure their employees and supply chain comply with the *Employer's* requirements.
 - k. Ensure all projects are inclusive and accessible for all by considering the "Access for All Design Guidance". This guidance will shortly be available on the *Employer's* internet pages.
 - l. Provide and report on, employment opportunities targeted at the unemployed and economically inactive and must employ 5% of their own, and their sub-contractors', workforce on formally recognised paid apprenticeships. The *Employer* may agree the *Supplier's* plans for use of apprenticeships on Work Packages, Package Orders and Time Charge Orders as part of the annual Supplier Development meetings.
 - m. Minimise their travel footprint by making use of technology, reducing journeys, use of public transport and sharing lifts, no flights should be taken by any employees working on this framework without approval of the *Employer's* Framework Manager and have a fully justified reason.
 - n. Monitor report and set targets on their company resource consumption (i.e. paper, utilities, travel)
3. On Lots 2,3 and 4 the *Supplier* must:
- a. Specify, source and purchase timber from legal and sustainable sources with an audit trail from forest to end use in accordance with the [Environment Agency's timber procurement policy](#) requirements. Also refer to the timber specification in Appendix 2 to Schedule 14.
 - b. Specify, source and purchase (where available locally) recycled aggregates ahead of virgin aggregates and seek to specify, source and purchase products with recycled content. The *Supplier* may at a later date be required to use the *Employer's* aggregates framework.
 - c. Use the Construction Carbon Calculator during appraisal, outline design, detailed design and at construction stages to identify, investigate and implement alternatives to reduce the project carbon footprint. This will be mandatory requirement on all construction projects >£250k.
4. On Lot 4 the *Supplier* must:
- a. Register with the Considerate Constructors Scheme as a Company by the end of the first year of the framework and sites registration as per the SHE Code of Practice. The *Employer* is now a client member of this scheme.
 - b. Purchase any tropical hardwood through the *Employer's* Framework for Tropical Hardwood (where appropriate and use of hardwood has received separate approval)
 - c. Gain chain of custody certification for timber by at least one of the certification schemes (FSC or PEFC) by the end of the first year from the commencement date

- d. Procure steel piles through the *Employer's* sheet pile framework.
 - e. Use on-site borrow pits where appropriate to win material with subsequent habitat creation.
 - f. Minimise waste sent to landfill by following the waste hierarchy (reduce, reuse, recycle) through the project planning process and documenting this in the relevant Site Waste Management Plan (SWMP) as below.
 - g. Use the WRAP SWMP template for all construction projects >£250k
 - h. Use the WRAP SWMP lite template for all construction projects <£250k
 - i. Register all excess excavated materials without an identified use on the CL:AIRE materials register, to share with other projects and use this and other resources to source recycled materials for projects.
 - j. Reduce, monitor and report all water usage on-site (abstractions, mains water & bowsers).
 - k. Work in accordance within our Low Carbon Concrete Policy and the associated Carbon Cap for Concrete. This is under development and details will be published when available.
 - l. Ensure tier one Suppliers sign-up to the pan government supply chain reporting tool looking at scope 1,2 & 3 emissions.
9. The *Supplier* must communicate the *Employer's* sustainability requirements throughout their supply chain, partners and wider organisation, share best practice / lessons learned with other Suppliers and participate in forums and initiatives to help demonstrate that this is the most sustainable Framework Agreement ever.
10. It is the *Employer's* aspiration that the *Supplier* will choose to apply these principles across their whole business. The Environment Agency has a corporate commitment to improve the sustainability performance of its major Suppliers. To this end, the *Employer* shall agree improvement targets with the *Supplier* within the Supplier Development Plans.

Resource Targets – Construction projects

11. The *Employer* shall at Framework Agreement and Work Package, Package Order and Time Charge Order level, set targets in respect of:
- a. Carbon dioxide emissions
 - b. Waste to landfill
 - c. Onsite water usage
- Furthermore, 100% of timber purchased on behalf of the Employer must be from legal and sustainable sources with full chain of custody demonstrated.
12. All targets will be monitored through performance management measures. Selected targets will be included in the Sustainability Scorecard. They will be a key part of the Supplier Development process and will be linked to payment incentives/penalties.

Incentives and Work Opportunities

13. The sustainability scorecard will form part of the performance measurement for the Framework Agreement.
14. Sustainability scores will be also be extracted from the scorecard and used to create a ranking of Suppliers based on sustainability performance alone.
15. Sustainability criteria will be included with the quality assessment of proposals received on all projects awarded under the framework Agreement.

Sustainability Programme

16. The *Supplier* will be invited to take part in the Supplier development sustainability programme, and will be expected to work with us towards our goals as outlined in the key sustainability message. This will include but will not be limited to the following;

- a. The *Supplier* will be expected to assess the key materials selected by design or purchased on behalf of the *Employer* by spend and sustainability risk and produce an action plan focussing on high risk materials/products (to include ethical issues, security of supply etc) to influence and monitor improvements.
- b. Throughout the supply chain the *Supplier* will be expected to work with other Suppliers on common material categories to identify and influence the opportunities for improvement.
- c. The Supplier will adopt a procurement structure equivalent to the requirements of the Sustainable Procurement Task Force Flexible Framework Maturity Matrix addressing embedding sustainable procurement within its organisation in respect of procurements made pursuant to this Framework Agreement and/or any Package Order, Work Package or Time Charge Order. Supplier Development Targets will be agreed.
- d. The *Supplier* shall provide details on their approach to managing diversity and equality within their organisation and supply chains setting a plan to action improvements where necessary.

Future initiatives

17. There may be new initiatives, targets and approaches that will be appropriate to introduce to the Framework Agreement during its lifetime.
18. For example, Ecosystem Valuation and Social Return on Investment and improved Government Buying Standards are in early stages of development and are both likely to be relevant to the Framework.

Additional links via our Website:

[Engineering a Better Environment Sustainable Engineering Procurement Strategy 2011 to 2020 \(Section 5: Sustainability\)](#)

[Environment Agency Sustainable Procurement Pages](#)

[Environment Agency Diversity & Equality Commitments](#)

Appendix 1 to Schedule 14

Environment Agency Diversity & Equality Requirements

We believe that diversity is as important to the workplace as it is in the natural environment. Diversity in this context means differences visible and non-visible, differences of background, socio-economic group, personality, and work-style, as much as the more overt differences of the nine protected characteristics listed in the Equality Act 2010:

age, disability, gender reassignment, race, religion or belief, sex (gender), sexual orientation, marriage & civil partnership, and pregnancy & maternity.

To fulfil our vision of a better environment for present and future generations, we will develop an organisation where all employees are actively supported in giving their best contribution to the Environment Agency aims and objectives.

Policy Objectives

People are treated as individuals with fairness and respect.

We are committed to promoting diversity and equality in all our policies, procedures, processes and actions and to valuing the diversity of our workforce and the customers, suppliers, partners and communities we interact and work with.

We are committed to creating and maintaining an organisation free from discrimination or harassment and where everyone is treated with fairness, dignity and respect and where inclusion is the norm."

Expectations of the Suppliers

Diversity and equality will be taken into account and reflected in our procurement of goods, works and services. Contractors, partners and suppliers who deliver services on our behalf will share our aspirations for diversity and equality by complying with our Policy requirements. This will include ensuring that projects and communications in relation to those services are inclusive and accessible to all.

We will work with the supplier as part of ongoing relationship management. Diversity is a key element of our Supplier Development Programme where we will actively work with and monitor the performance of the Contract to ensure our diversity and equality objectives are fulfilled.

In addition we expect our contractors to work with us to fully understand and remove any perceived and actual barriers to people and suppliers from underrepresented groups working on Environment Agency projects. To achieve this we will ask suppliers to provide us with diversity management information on the make up of staff and key suppliers working on EA projects., The exact requirement for diversity management information is to be agreed as the contract develops but it should as a minimum include information on Age, Disability, Gender, , Race, Religion & Belief and, Sexual Orientation

Appendix 2 to Schedule 14

Timber specification

The Environment Agency uses timber (softwood, temperate and tropical hardwood, as relevant) in a range of projects and applications, including but not limited to:

- fencing, habitat restoration work and agricultural improvements (e.g. livestock bridges)
- marine and freshwater structures (e.g. lock gates, jetties, landing stages, fenders, decking, footbridges, groynes and planking)
- construction / refurbishment, e.g. window frames, doors, roofing timbers, scaffolding, hoardings, shuttering
- furniture.

Depending on the structure and the type of natural environment, we require timber that exhibits some or all of the following properties:

- high strength to weight ratio
- high density
- good workability
- good durability to attack by decay-causing fungi
- resistance to attack by marine borers
- high tolerance to short duration loads
- resistance to abrasion.

As far as possible, the Environment Agency aims to specify its timber requirements in performance output terms rather than demanding a specific species of timber.

If tropical hardwood timbers are required, as well as using popular commercial timbers such as Greenheart and Ekki, we are actively seeking to use more lesser known species, particularly Angelim Vermelho (*Dinizia excelsa* Ducke), Cupiuba (*Goupia glabra* Aubl), Eveuss (*Klaineidoxa gabonensis*), Okan (*Cylicodiscus gabunensis* Harms) and Tali (*Erythrophleum micranthum*). Comprehensive technical data on the key properties of these five lesser known species is contained within an Environment Agency commissioned research report available at: <http://publications.environment-agency.gov.uk/dispay.php?name=SCHO0411BTPP-E-E>.

The Environment Agency places particular importance on the sourcing and use of timber that complies with the UK Government Timber Procurement Policy. All timber supplied under this Framework Contract must comply with the UK Government Timber Procurement Policy, as explained in the clauses below.

For operational reasons, the Environment Agency has a strong preference for timber supplied with Category A evidence of legality, sustainability and chain of custody (i.e. FSC or PEFC certified timber). Acceptance of timber supplied with Category B evidence and FLEGT-licensed timber will be considered on a case by case basis, by exception.

A Glossary of Terms is attached as Annex A.

Timber Specification Clauses

Requirements for Timber

1. All timber and wood-derived products for supply or use in performance of the contract must be independently verifiable and either:
 - from a Legal and Sustainable source; or
 - from a FLEGT-licensed or equivalent source.

2. Recycled or reclaimed timber may be supplied as an alternative to virgin timber. The Glossary of Terms attached as Annex A provides a definition of recycled and reclaimed timber in accordance with the UK Government Timber Procurement Policy.

Requirements for proof of Timber Origin

3. Management of the forest or plantation shall be audited at intervals confirming ongoing good forest management and by organisations with appropriate forest management experience that are independent of the organisation that holds timber harvest and/or management rights for that forest.
4. The Contracting Authority will accept evidence from any of the following three categories:
5. Category A evidence: Certification under a scheme recognised by the UK government as meeting the criteria set out in the document entitled "UK Government Timber Procurement Policy: Criteria for Evaluating Certification Schemes (Category A Evidence)" (available from the Contracting Authority on request and on [CPET's website](#)). The edition current on the day the contract is awarded shall apply. A list of assessed certification schemes that currently meet the government's requirements can be found on [CPET's website](#). Acceptable schemes must ensure that at least 70% (by volume or weight) is from a Legal and Sustainable source with the balance from a legal source.
6. Category B evidence: Documentary evidence, other than Category A evidence and FLEGT evidence, that provides assurance that the source is sustainable. In this context "sustainable" is defined in the document entitled "UK Government Timber Procurement Policy: Framework for Evaluating Category B evidence" (available from the Contracting Authority on request and on CPET's website). The edition current on the day the contract is awarded shall apply. Such Category B evidence may include, for example, independent audits and declarations by the Supplier or his Suppliers. Where Category B evidence is to be relied on, the Supplier is required to notify the Contracting Authority of the source or sources of all virgin timber and wood-derived products supplied. Source in this context means the forest or plantation where the trees were grown and all subsequent places of delivery through the supply chain prior to receipt of the timber or wood-derived product by the Contracting Authority. The Supplier shall separately identify virgin timber and wood-derived products supplied from forests and plantations that are claimed to be subject to sustainable timber production and shall submit to the Contracting Authority documentation in respect of such wood to confirm that the criteria for sustainable timber production set out in this specification have been met. If mixing is unavoidable within the supply chain then sources can still be accepted provided that there are adequate controls in place and at least 70% (by volume or weight) is from a Legal and Sustainable source with the balance from a legal source.
7. FLEGT evidence, from either or both of the following categories:
 - Evidence of timber and wood-derived products being exported from a timber-producing country that has signed a bilateral Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) with the European

Union and which have been licensed for export by the producing country's government. This may also include timber and wood-derived products that have been independently verified as meeting all the producing country's requirements for a FLEGT licence, where a VPA has been entered into but the FLEGT licensing system is not fully operational.

- Equivalent evidence from a country that has not entered into a VPA which demonstrates that all of the requirements equivalent to FLEGT-licensed timber have been met.
8. In relation to recycled and reclaimed timber, the need for documentary evidence and independent verification also applies but will focus on the use to which the timber was previously put rather than the forest source.

Annex A: Glossary of Terms

Timber and wood-derived products: means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element (e.g. paper). Timber and wood-derived products supplied or used in performance of the contract that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the contract that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry.

Legal and Sustainable: means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "*UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement*" (available from the Contracting Authority on request and from the CPET website). The edition current on the day the contract is awarded shall apply.

FLEGT: means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber.

FLEGT-licensed: means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by a bilateral Voluntary Partnership Agreement (VPA) between the European Union and a timber-producing country under the FLEGT scheme, where both parties have agreed to establish a system under which timber that has been produced in accordance with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government. This may also include any timber that has been independently verified as meeting all the producing country's requirements for a FLEGT licence, where a VPA has been signed but the FLEGT licensing system is not fully operational. Evidence from a country that has not signed up to a VPA which demonstrates that all of the requirements equivalent to FLEGT-licensed timber have been met will also be acceptable. CPET will produce further guidance on FLEGT-licensed or equivalent timber in due course.

Recycled: means recovered wood that prior to being supplied to the Contracting Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre, and drift wood.

It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials, but will focus on the use to which the timber was previously put rather than the forest source.

Short-rotation coppice: means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy.

CPET: means the UK Government's Central Point of Expertise on Timber. CPET contact details: Phone: 01865 243766, Email: cpet@proforest.net, Website: www.cpet.org.net

Schedule 15 Quality and communication

Quality

1. The *Employer* expects that the *Supplier* shall have or be in the process of obtaining ISO 9001 and ISO 14001 registrations. Quality Management Systems must comply with the requirements of ISO 9001 and ISO 14001.
2. The *Supplier's* systems must be OHSAS 18001 compliant within 12 months from the commencement date.
3. The *Supplier* shall provide a Quality Policy Statement, Quality Plan and Communication Plan as stipulated in Work Packages, Package Orders or Time Charge Orders.
4. Where applicable, the use of Eurocodes is mandatory.
5. All relevant *Employer* Operating Instructions will be made available to the *Supplier* at both project and framework level. The *Supplier* must adhere to the standards and procedures described in these.

Communications

6. The *Supplier* and the Suppliers will work together with the *Employer* and Others (and in particular other Risk Management Authorities) to develop common management systems and processes for the operation of the Framework Agreement. This will be managed under the Framework Management Arrangements.

Asite

7. The *Employer* uses the Asite project collaboration tool to provide a single point of access to Framework and project guidance for Suppliers. The *Supplier* is expected to register with Asite and maintain access for their Staff in order to:
 - a. Manage all contract and project level administration, sharing documents, commenting and providing an audit trail.
 - b. Access the latest versions of standard documentation (e.g. procedures, templates, guidance notes, work instructions, contracts etc) to support the delivery of projects and avoid different parties using different versions of the same standard documentation
 - c. Participate in sharing lessons learnt.

The *Employer* shall notify the *Supplier* when it publishes any new documents or amends any existing documents on Asite.

Documentation

8. The *Supplier* and Suppliers will work with the *Employer* and Others (and in particular Risk Management Authorities) to supply Project Management information and Project Deliverables in an agreed format and to the required quality standard. Specific and general guidance is published on Asite.
9. All documents and reports must be produced wherever possible on recycled paper and printed double sided, unless directed to do otherwise by the *Employer*.

Telephony and IT systems

10. The *Supplier* is required to have the facility to hold telephone conferences including the use of (web based) Live Meeting with the *Employer* from all the office(s) they operate Staff from. Any costs associated with this are included in the rates.
11. Electronic copies of all documents, where requested by the *Employer*, are to be provided through Asite, in a format compatible with the *Employer's* computer software. E-mail or CD may be used by agreement.
12. The *Employer* currently uses the following packages: -

- a. MS Office 2007
 - b. MS Project 2007
 - c. ISIS 2.3
 - d. HECRAS 3.1.2
 - e. @RISK
13. These and other industry standard packages which the *Supplier* will be expected to support may be added or updated during the term of this Framework Agreement.
14. The *Employer* requires the *Supplier* to have the capability to provide certain documents in pdf format. There are currently different pdf writers which form pdf files. The *Employer* uses Acrobat reader 8.0 to view pdf documents. Documents in pdf format are only to be provided if specifically asked for.
15. It remains the *Supplier's* responsibility to provide information in a format compatible with the *Employer's* and Others' systems and software.

Current Publication

16. The Framework Newsletter, Current, will be published approximately three times a year. Current will be a mixture of news and articles that highlight good practice and up-to-date features showcasing projects involving the Suppliers. Current will be developed with editorial contribution from the *Employer*, Others, Suppliers and the National Cost Management Framework (NCMF). It will be produced by an executive editorial board representing these parties.
17. The *Supplier* will actively participate in Current by sharing news and successes with the editorial team. Production costs are equally divided between Suppliers only.

Site Branding

18. The *Employer* has guidelines for how our sites should be branded in order to ensure that they are recognised as the *Employer's* schemes/projects. The *Supplier* shall comply with the *Employer's* Site Branding Guidance for site signage on construction sites.

Building Information Modelling

19. The *Employer* requires the *Supplier* to deliver Building Information Modelling (BIM) for Work Packages, Package Orders and Time Charge Orders in line with the Government Construction Strategy.
20. The Cabinet Office is co-ordinating Government's drive to the development of standards enabling all members of the supply chain to work collaboratively through Building Information Modelling (BIM). This will be a phased process working closely with industry groups, in order to allow time for industry to prepare for the development of new standards and for training. This will require fully collaborative 3D BIM (with all project and asset information, documentation and data being electronic) as a minimum by 2016 and the *Supplier* must support the *Employer* in the delivery of this target. Costs will be recovered through Work Packages, Package Orders and Time Charge Orders.
21. The *Supplier* is obliged to:
- a. Take responsibility for the BIM infrastructure and sharing data electronically (technology should be no more complex than systems already in use within the industry).
 - b. Comply with Data Standards BS 1192 and the pending ISO standard as well as operational instructions developed by the *Employer*.
 - c. Demonstrate how BIM influences key decisions in the delivery of projects.

- d. Work for all projects to deliver information from 3D models for separate disciplines (architecture, structural, services, FM etc) together with programme data and costs.
 - e. Handover documents and information electronically at the end of the project. The Government Construction Board is expecting manufacturers to be producing their customer information in a variety of forms so it would be a case of the *Supplier* providing the files that the manufacturer has. This could for example include video clips demonstrating maintenance procedures for specific items.
 - f. Support the Government Soft Landings initiative regarding commissioning, training and handover.
22. Further obligations will be placed on Suppliers as the BIM initiative develops.

Schedule 16 Emergency Works

1. During the term of this Framework Agreement the *Employer* may request the *Supplier* to respond to a variety of emergencies relating to the *Employer's* functions. These are referred to as Emergency Works.
2. Under this Framework Agreement, the *Supplier* is not required to have a 24 hour stand-by service in place to specifically respond to *Employer* requests to carry out Emergency Works. Nevertheless, the *Supplier* may be required to provide assistance to the *Employer* in relation to Emergency Works wherever and whenever practicable on a reasonable endeavours basis.
3. Unless otherwise agreed between the *Employer* and the *Supplier*, Emergency Works carried out under this Agreement will be subject to a Time Charge Order, using rates set out in the Price Workbook for the relevant Lot (as amended in accordance with Schedule 7).
4. The *Supplier* may carry out Emergency Works for the *Employer* under a number of different circumstances and managed by a variety of the *Employer's* personnel. They may take place during or immediately after the emergency event and be of a short, medium or long term nature. Emergency Works may have an effect on any work programme previously agreed with the *Supplier*.
5. The *Supplier* shall maintain a list of personnel who may be contactable in an emergency situation during normal working hours.

Schedule 17

DATED

PARENT COMPANY GUARANTEE FROM SUPPLIER'S PARENT COMPANY

relating to the

Water and Environment Management Framework Agreement

between

GUARANTOR

and

ENVIRONMENT AGENCY

Contents

<i>Clause</i>	<i>Page</i>
Interpretation	3
Guarantee and indemnity.....	4
Amendments to the Framework Agreement	5
Employer does not have to pursue Supplier	5
Insolvency of Supplier	5
Priority of claims against the Supplier	5
Limit of liability	6
Assignment.....	6
Notices.....	6
Third party rights	7
Governing law and jurisdiction	7
Termination	7

THIS DEED is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“**Guarantor**”)
- (2) ENVIRONMENT AGENCY of Horizon House, Deanery Road, Bristol, BS1 5AH (“**Employer**”)

BACKGROUND

- (A) By a framework agreement in writing (**Framework Agreement**) dated [DATE] and made between the Employer and [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**), the Supplier agreed to perform call of contracts to provide works and/or services to the Employer (“**Call Off Contracts**”).
- (B) The Guarantor (the [immediate **OR** ultimate] parent company of the Supplier) has agreed to guarantee the Supplier's due performance of its duties or obligations under the Framework Agreement and all Call Off Contracts made under it.

AGREED TERMS

Interpretation

- 1.1 The definitions and rules of interpretation in this clause and the background apply in this deed.

Business Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

Insolvency Event: a person suffers an insolvency event if it:

- (a) stops or suspends payment of any of its debts, or is unable to (or admits inability to) pay its debts as they fall due; or
- (b) begins negotiations (because of actual or anticipated financial difficulties) with, or enters into any composition or arrangement with one or more of its creditors with a view to rescheduling any of its indebtedness; or
- (c) suffers any of the following events:
 - (i) a moratorium of any indebtedness, winding-up, dissolution, suspension of payments, administration, reorganisation (as a voluntary arrangement, scheme of arrangement or otherwise), petition for bankruptcy, composition, compromise, assignment or arrangement with any creditor; or
 - (ii) any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer is appointed in respect of that person or any of its assets; or
 - (iii) any event occurs in relation to that person that is analogous to the events listed in this definition.

- (d) If a person carries out a solvent, voluntary winding up that is solely for the purpose of reconstruction or amalgamation, that person does not suffer an Insolvency Event.
- 1.2. Clause headings shall not affect the interpretation of this deed.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8. A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. Any obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11. A reference to writing or written includes faxes but not e-mail.
- 1.12. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this deed) at any time.
- 1.13. References to clauses are to the clauses of this deed.
- 1.14. Where the words include(s), including or in particular are used in this deed, they are deemed to have the words "without limitation" following them.

Guarantee and indemnity

- 2.1. The Guarantor guarantees the due and punctual performance by the Supplier of the Supplier's duties and obligations to the Employer under the Framework Agreement and all Call Off Contracts .

- 2.2. If the Supplier fails to observe or perform any of its duties or obligations to the Employer under the Framework Agreement and/or any Call Off Contract, or if the Supplier fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Supplier to the Employer under or in connection with the Framework Agreement and/or any Call Off Contract, the Guarantor (as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1) shall indemnify the Employer against all loss, debt, damage, interest, cost and expense incurred by the Employer by reason of such failure or non-payment and shall, on first written demand, pay to the Employer, without any deduction or set-off, the amount of that loss, debt, damage, interest, cost and expense.
- 2.3. If the Supplier suffers an Insolvency Event or if the Employer terminates the Supplier's employment under the Framework Agreement or any and/or any Call Off Contract, the Guarantor shall indemnify the Employer against all loss, debt, damage, interest, cost and expense incurred by the Employer by reason of such termination and shall, on first written demand, pay to the Employer without any deduction or set-off the amount of that loss, debt, damage, interest, cost and expense.

Amendments to the Framework Agreement

- 3.1. The Framework Agreement and/or any Call Off Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this deed (which includes the Supplier's duties, obligations and liabilities under the Framework Agreement and/or any Call Off Contract as modified, amended or supplemented) shall not be affected by:
- 3.1.1 any such modification, amendment or supplement; or
 - 3.1.2 any invalidity, avoidance or termination of the Framework Agreement and/or any Call Off Contract; or
 - 3.1.3 any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Supplier. The terms of this deed shall apply to the terms of any such compromise as they apply to the Framework Agreement.

Employer does not have to pursue Supplier

- 4.1 The Employer does not have to pursue any remedy against the Supplier before proceeding against the Guarantor under this deed.

Insolvency of Supplier

- 5.1 Without affecting clause 2.3, if the Supplier suffers an Insolvency Event that shall not affect or reduce the Guarantor's liability under this deed.

Priority of claims against the Supplier

- 6.1 As long as any liability incurred by the Supplier to the Employer guaranteed under this deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability

arising under this deed, effect (or try to effect) any recovery from the Supplier, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise.

Limit of liability

- 7.1 The Employer may not recover any more under this deed in respect of any matter than the Employer would be entitled to recover from the Supplier in respect of that matter, net of any set off. The Employer may not start proceedings against the Guarantor under this deed in respect of any claim if any proceedings against the Supplier in respect of that claim would be statute-barred.

Assignment

- 8.1 The Employer may assign or charge the benefit of this deed to any person to whom the Employer lawfully assigns or charges the benefit of the Framework Agreement.
- 8.2 The Guarantor and the Supplier may not assign or charge the benefit of this deed without the Employer's written consent.
- 8.3 The Employer shall notify the Guarantor of any assignment. If the Employer fails to do this, the assignment shall still be valid.
- 8.4 The Guarantor shall not contend that any person to whom the benefit of this deed is assigned under clause 8.1 may not recover any sum under this deed because that person is an assignee and not a named party to this deed.

Notices

- 9.1 Any notice [or other communication] required to be given under this deed shall be in writing and shall be delivered personally, sent by pre-paid first-class post, recorded delivery or by commercial courier to each party required to receive the notice or communication at its address:

[GUARANTOR]: [CONTACT] [ADDRESS]; and

Environment Agency, Horizon House, Deanery Road, Bristol, BS1 5AH,

or as otherwise specified by the relevant party by notice in writing to each other party.

- 9.2 Any notice or other communication shall be deemed to have been duly received:
- 9.2.1 if delivered personally, when left at the address and for the person referred to in this clause; or
- 9.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- 9.2.3 if delivered by commercial courier, on the date, and at the time, that the courier's delivery receipt is signed.

- 9.3 A notice or other communication required to be given under this deed shall not be validly given if sent by e-mail.
- 9.4 This clause 9 shall not apply to the service of any proceedings or other documents in any legal action.

Third party rights

10. A person who is not a party to this deed shall not have any rights under or in connection with it.

Governing law and jurisdiction

- 11.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 11.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

Termination

12. Without prejudice to any claim by the Employer against the Guarantor in respect of any sums due under this deed the Guarantor's obligations under this deed shall determine upon a date twelve years from the termination of the Framework Agreement or the expiry of the defect correction period of the last Call Off Contract, whichever is the later.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed as a deed by [NAME OF]

.....

[SIGNATURE OF]

in the presence of [NAME OF WITNESS]

.....

[SIGNATURE OF WITNESS]

.....

[NAME OF WITNESS]

.....

.....

[ADDRESS OF WITNESS]

Signed as a deed by [NAME OF]

.....

[SIGNATURE OF]

in the presence of [NAME OF WITNESS]

.....

[SIGNATURE OF WITNESS]

.....

[NAME OF WITNESS]

.....

.....

[ADDRESS OF WITNESS]

Executed as a deed by [NAME OF] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....

[SIGNATURE OF FIRST DIRECTOR]

Director

.....

[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]

[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....

[SIGNATURE OF DIRECTOR]

Director

.....
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

SCHEDULE 18

DATED

PERFORMANCE BOND

relating to a project at

[SHORT DESCRIPTION OF PROJECT OR WORKS]

between

PARTY 1

and

PARTY 2

and

ENVIRONMENT AGENCY

Contents

<i>Clause</i>	<i>Page</i>
1. Interpretation	3
2. Promise to pay up to Maximum Amount.....	4
3. Amendments to Building Contract	5
4. Priority of claims against the Supplier.....	5
5. Conclusive liability and extent of liability.....	6
6. Expiry	6
7. Assignment	7
8. Notices	7
9. Third party rights	7
10. Governing law and jurisdiction	8
 <i>Annex</i>	
Annex Form of notice	11

THIS DEED is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“**Surety**”).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“**Supplier**”).
- (3) ENVIRONMENT AGENCY of Horizon House, Deanery Road, Bristol, BS1 5AH (“**Employer**”).

BACKGROUND

- (A) The Employer has employed the Supplier to carry out [design and] construction work.
- (B) The Employer requires the Supplier to provide a bond, in the form of this deed, to the Employer.
- (C) The Surety has agreed to enter into this deed with the Employer and the Supplier for the benefit of the Employer.

AGREED TERMS

Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this deed.

Building Contract: an agreement in writing dated [DATE] between the Employer and the Supplier.

Business Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

Funder: a person that has provided, or is to provide, finance in connection with:

- (a) the whole or any part of the Works or the completed Works; and/or
- (b) the site of the Works

whether such person acts on its own account, as agent for a syndicate of other parties or otherwise.

Maximum Amount: £[SUM][, subject to clause 2.3, reducing to £[SUM] [one **OR** two **OR** three] calendar months after the issue of [a certificate (or certificates) of practical completion under the Building Contract for all the Works **OR** the Employer's written statement, under the Building Contract, that all the Works have reached practical completion]].

Works: the [design,] construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Supplier in accordance with the Building Contract.

- 1.2. Clause [and annex] headings shall not affect the interpretation of this deed.

- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].
- 1.4. The annex forms part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the annex.
- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Words in the singular shall include the plural and vice versa.
- 1.7. A reference to one gender shall include a reference to the other genders.
- 1.8. A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.9. A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.10. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11. Any obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12. A reference to writing or written includes faxes but not e-mail.
- 1.13. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this deed) at any time.
- 1.14. References to clauses or the annex are to the clauses or the annex of this deed.
- 1.15. Unless otherwise expressly provided, the obligations and liabilities of the Supplier and the Surety under this deed are joint and several
- 1.16. Where the words include(s), including or in particular are used in this deed, they are deemed to have the words "without limitation" following them.

Promise to pay up to Maximum Amount

- 2.1 If the Supplier fails to pay any sum that becomes due from it to the Employer under or in connection with the Building Contract (including any debt, damages, interest or costs), the Employer may give notice to the Surety requiring the Surety to pay that sum, up to the Maximum Amount, to the Employer. The Surety shall pay that sum to the Employer within 5

Business Days of receipt of the Employer's notice. The Employer's notice may be in the form set out in the Annex.

- 2.2 The Employer may give different notices to the Surety on different occasions, each requiring the Surety to pay the sum referred to in clause 2.1, but the Surety shall not be obliged to pay to the Employer more than the Maximum Amount in aggregate.
- 2.3 If the amount of the Maximum Amount reduces three calendar months after the issue of the Employer's written statement, under the Building Contract, that all the Works have reached practical completion, references to the Maximum Amount in this deed are references to the Maximum Amount on the date of a notice given by the Employer under clause 2.1.

Amendments to Building Contract

- 3.1 The Building Contract or the Works may be modified, amended or supplemented in any way without the consent of the Surety. No such modification, amendment or supplement shall affect, release or impair the liability of the Surety under this deed. The Surety's liability shall extend to all the liabilities of the Supplier under the Building Contract as modified, amended or supplemented.
- 3.2 The invalidity, avoidance or termination of the Building Contract shall not affect, release or impair the liability of the Surety under this deed.
- 3.3 No waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Supplier shall affect, release or impair the liability of the Surety under this deed. The terms of this deed shall apply to the terms of any such waiver, concession, allowance of time, compromise or forbearance as they apply to the Building Contract.

Priority of claims against the Supplier

- 4.1 Until the Employer has recovered all sums due to it under or in connection with the Building Contract, the Surety shall not:
- 4.1.1 in respect of any payment made or liability under this deed, claim, rank or vote as a creditor in the liquidation of the Supplier in competition with the Employer; or
 - 4.1.2 enforce any security over the assets of the Supplier in respect of any such payment or liability in competition with the Employer.

This clause 4 shall not limit or restrict the exercise or enforcement by the Surety of its rights against any other person.

- 4.2 If the Surety recovers any sums in breach of clause 4.1, the Surety shall hold such sums on trust:
- 4.2.1 to pay to the Employer any sums due from the Supplier to the Employer under or in connection with the Building Contract, as set out in clause 4.3; and
 - 4.2.2 subject to clause 4.2.1, for the benefit of the Surety.

4.3 The Employer may enforce this clause 4 to keep itself, or to put itself, in the position it would be in if the Surety had no rights of recourse against the Supplier or the Supplier's assets in respect of:

4.3.1 any payment made by the Surety; or

4.3.2 any liability of the Surety under this deed

but no further.

Conclusive liability and extent of liability

5.1 For the purposes of this deed, any money judgment, award or adjudicator's decision against the Supplier in favour of the Employer under or in connection with the Building Contract shall be conclusive evidence of any liability of the Supplier to which that judgment, award or decision relates.

5.2 Subject to clause 5.1 the Surety may rely on any term of the Building Contract and may raise equivalent rights of defence in respect of any claim by the Employer under this deed as it would have had if the Surety had been named as a joint contractor with the Supplier under the Building Contract (excluding any set-off or counterclaim against the Employer under the Building Contract).

5.3 The inability of the Supplier to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or the entry of the Supplier into liquidation, administration, receivership, bankruptcy or any compromise or arrangement with some or all of its creditors (or any equivalent process in any other jurisdiction) shall not reduce, release or impair the liability of the Surety under this deed.

5.4 The Employer shall not be obliged to pursue any means of recourse against the Supplier before being entitled to enforce this deed against the Surety.

5.5 The Employer may compromise, release, waive or neglect any security as it sees fit, without impairing its rights under this deed.

5.6 The Employer shall notify the Surety within 20 Business Days if it begins any legal action (including any adjudication, litigation or arbitration) against the Supplier under or in connection with the Building Contract.

Expiry

6.1 Subject to clause 6.2, this deed shall expire three calendar months after the issue of a certificate or certificates of making good of defects under the Building Contract for all the Works .

6.2 If the Employer has given any notice under clause 2.1 before the end of the three calendar months referred to in clause 6.1, clause 6.1 shall not affect that notice and the Employer may continue its claim under that notice.

Assignment

- 7.1 The Employer may assign or charge the benefit of this deed, without the consent of the Surety or of the Supplier, to any Funder, or to any person to whom the Employer assigns the benefit of the Building Contract.
- 7.2 The Employer shall notify the Surety and the Supplier of any assignment. If the Employer fails to do this, the assignment shall still be valid.
- 7.3 The Supplier and the Surety shall not contend that any person to whom the benefit of this deed is assigned may not recover any sum (including any debt, damages, interest or costs) under this deed because that person is an assignee and not a named party to this deed.

Notices

- 8.1 Any notice required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:
- 8.1.1 ENVIRONMENT AGENCY of Horizon House, Deanery Road, Bristol, BS1 5AH
 - 8.1.2 [SUPPLIER]: [CONTACT] [ADDRESS]
 - 8.1.3 [SURETY]: [CONTACT] [ADDRESS]
- or as otherwise specified by the relevant party by notice in writing to each other party.
- 8.2 Any notice shall be deemed to have been duly received:
- 8.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or
 - 8.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
 - 8.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 8.3 A notice required to be given under this deed shall not be validly given if sent by e-mail.
- 8.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action (including any adjudication, litigation or arbitration).

Third party rights

- 9.1 A person who is not a party to this deed shall not have any rights under or in connection with it.

Governing law and jurisdiction

- 10.1 This deed and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
- 10.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by [NAME OF SURETY] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF SURETY] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF SUPPLIER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF SUPPLIER] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF EMPLOYER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]

OR

[Director **OR** Secretary]

Executed as a deed by [NAME OF EMPLOYER] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Annex Form of notice

[Referred to in clause 2.1.]

From: [EMPLOYER'S ADDRESS: SEE clause 8]

To: [SURETY'S ADDRESS: SEE clause 8]

CC: [SUPPLIER'S ADDRESS: SEE clause 8]

Sent by [hand **OR** first-class pre-paid post **OR** recorded delivery **OR** commercial courier].

Dear Sirs

Demand under a bond dated [DATE] (Bond) relating to [SHORT DESCRIPTION OF PROJECT OR WORKS]

This letter is a notice under the Bond. Defined terms used in this letter have the same meanings as in the Bond.

[We are the assignee of the benefit of the Bond by a [deed of assignment **OR** an assignment agreement] dated [DATE] between [PARTY] and [PARTY].]

[The Works have not reached practical completion. **OR** Practical completion of the Works occurred on [DATE].]

[The Works have not reached completion of making good defects. **OR** Completion of making good defects of the Works occurred on [DATE].]

The Supplier has failed to properly pay a sum due to us under or in connection with the Building Contract. We require you to pay to us £[SUM][, the Maximum Amount] within [5 **OR** 10] Business Days.

[We attach a copy of the [money judgment **OR** award **OR** adjudicator's decision] against the Supplier in our favour as conclusive evidence of your liability to us under the Bond.]

OR

[The sum due to us from the Supplier is summarised in the attachment to this notice.]
Please make payment to [PAYMENT DETAILS].

Yours faithfully

[SIGNED]

For and on behalf of the Employer

Enclosure.

Schedule 19 Collateral Warranties

Contents

WEM Collateral Warranty to be provided by a Consultant (Lots 1 – 3).	2
WEM Collateral warranty to be provided by a Contractor (Lot 4).	14
Collateral warranty to be provided by a Sub-Consultant to an employer.	26
Collateral warranty to be provided by a sub-contractor to an employer	38

WEM Collateral Warranty to be provided by a Consultant (Lots 1 – 3).

DATED

SUPPLIER'S COLLATERAL WARRANTY

relating to a project at

[SHORT DESCRIPTION OF PROPERTY OR PROJECT]

between

PARTY 1

and

PARTY 2

and

ENVIRONMENT AGENCY

CONTENTS

CLAUSE

1. Interpretation
2. Comply with the Professional Appointment
3. Step-in rights: Supplier may not terminate or discontinue
4. Step-in rights: Beneficiary may step-in
5. Step-in rights: Supplier's position and Employer's consent
6. No instructions to Supplier by Beneficiary
7. Professional indemnity insurance
8. Liability period
9. Assignment
10. Notices
11. Third party rights
12. Governing law and jurisdiction
13. Counterparts

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Beneficiary**).
- (3) Environment Agency whose registered office is at Horizon House, Deanery Road, Bristol BS1 5AH (**Employer**).

BACKGROUND

- (A) The Employer has engaged the Supplier to perform the Services in relation to the Project.
- (B) The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.
- (C) The Employer requires the Supplier to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Supplier has agreed to enter into this agreement with the Employer and the Beneficiary, for the benefit of the Beneficiary.
- (E) The Beneficiary has paid £1 to the Supplier and the Employer as consideration under this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Business Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

CDM Regulations: the Construction (Design and Management) Regulations 2007 (SI 2007/320) and the related Approved Code of Practice issued by the Health and Safety Commission.

Deleterious: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part of component of the Project; or

- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable certificate issued by the British Board.

Professional Appointment: an agreement in writing dated [DATE] between the Supplier and [the Employer **OR** [ORIGINAL EMPLOYER]] and novated to the Employer under a deed of novation dated [DATE] between the Supplier, [ORIGINAL EMPLOYER] and the Employer].

Programme: the programme, as defined in the Professional Appointment.

Project: [DESCRIPTION OF PROJECT].

Required Standard: all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Supplier's profession undertaking the Services on works similar in scope and character to the Project.

Services: The services referred to in the Professional Appointment, performed by or on behalf of the Supplier under the Professional Appointment.

WEM Framework Agreement: the Water and Environment Management Framework Agreement dated [] made between the Employer and the Supplier

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assign.
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words "without limitation" following them.

2. COMPLY WITH THE PROFESSIONAL APPOINTMENT

2.1 In consideration of the £1 paid by the Beneficiary to the Supplier (which the Supplier acknowledges receipt of) The Supplier warrants to the Beneficiary that:

- (a) it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:
- (i) carry out and fulfil, in all respects, the duties of a designer [and CDM co-ordinator] under the CDM Regulations;
 - (ii) not, without the Employer's consent, make any material change to the designs or specifications for the Project after they have been settled or approved; and
 - (iii) act fairly and impartially when exercising its power to issue certificates and award extensions of time under any building contract relating to the Project.
- (b) it shall exercise the Required Standard:
- (i) when performing the Services;
 - (ii) not to specify for use any products or materials in the Project, which are Deleterious at the time of specification or use;
 - (iii) to comply with (and ensure the completed Project complies with) any:
 - (A) Act of Parliament;
 - (B) instrument, rule or order made under any Act of Parliament; and
 - (C) regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has

any jurisdiction over the Project or with whose systems or property the Project is or will be connected;

- (iv) to perform the Services and prepare all Material for those elements of the Project for which the Supplier is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
- (v) to ensure so far as is reasonably practicable that the Project complies with all planning agreements, permissions and conditions.

2.2 In proceedings for breach of this clause 2, the Supplier may:

- (a) rely on any limit of liability or other term of the Professional Appointment; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint Employer, with the Employer, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual Employer under the Professional Appointment).

2.3 The Supplier's duties or liabilities under this agreement shall not be negated or diminished by:

- (a) any approval or inspection of:
 - (i) the Project; or
 - (ii) any designs or specifications for the Project; or
- (b) any testing of any work, goods, materials, plant or equipment; or
- (c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Employer.

2.4 This agreement shall not negate or diminish any other liability or otherwise owed to the Beneficiary by the Supplier.

3. STEP-IN RIGHTS: SUPPLIER MAY NOT TERMINATE OR DISCONTINUE

3.1 The Supplier shall not exercise, or seek to exercise, any right to:

- (a) terminate its employment under the Professional Appointment; or
- (b) discontinue performance of the Services,

for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 10 Business Days' written notice of its intention to do so. Any notice from the Supplier shall specify the grounds for the Supplier's proposed termination or discontinuance.

- 3.2 If the Professional Appointment allows the Supplier a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Professional Appointment shall be extended to take account of the notice period required under clause 3.1.
- 3.3 The Supplier's right to terminate its employment under the Professional Appointment, or to discontinue performance of the Services, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Supplier, copied to the Employer:
- (a) requiring the Supplier not to terminate its employment or not to discontinue performance of the Services under the Professional Appointment;
 - (b) acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the Professional Appointment; and
 - (c) undertaking that the Beneficiary or its nominee will pay to the Supplier:
 - (i) any sums due and payable to the Supplier under the Professional Appointment in future; and
 - (ii) any sums then due and payable to the Supplier under the Professional Appointment that are unpaid.
- 3.4 If the Beneficiary serves notice on the Supplier under clause 3.3, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Supplier and the Beneficiary (to the exclusion of the Employer).
- 3.5 In complying with this clause 3, the Supplier:
- (a) does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Employer; and
 - (b) may exercise its right to terminate its employment under the Professional Appointment, or discontinue performance of the Services, after the expiry of the notice period referred to in clause 3.1, unless the Supplier's right to terminate or discontinue has ceased under clause 3.3.

4. STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN

- 4.1 without affecting clause 3.1, if the Beneficiary serves a notice on the Supplier, copied to the Employer, that:
- (a) confirms that the Beneficiary wishes to step-in to the Professional Appointment; and
 - (b) complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Supplier and the Beneficiary (or its nominee), to the exclusion of the Employer.

4.2 The Supplier shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Supplier shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Supplier does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Employer.

5. STEP-IN RIGHTS: SUPPLIER'S POSITION AND EMPLOYER'S CONSENT

5.1 The Supplier shall not incur any liability to the Employer by acting in accordance with clause 3 or clause 4.

5.2 The Employer has entered into this agreement to confirm its consent to the agreement.

6. NO INSTRUCTIONS TO SUPPLIER BY BENEFICIARY

Unless the Beneficiary has stepped-in under clause 3 or clause 4, the Beneficiary may not give instructions to the Supplier under this agreement.

7. PROFESSIONAL INDEMNITY INSURANCE

7.1 The Supplier shall maintain professional indemnity insurance for an amount stated in the WEM Framework Agreement for a period beginning on the date of this agreement and ending six years after the date of making good of defects of the Project,

7.2 The Supplier shall not, without the Beneficiary's written consent:

- (a) settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Supplier; or
- (b) by any act or omission lose or affect the Supplier's right to make, or proceed with, that claim against the insurers.

7.3 Whenever the Beneficiary reasonably requests, the Supplier shall send the Beneficiary evidence that the Supplier's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Supplier's insurers or brokers confirming:

- (a) the Supplier's then current professional indemnity insurance; and
- (b) that the premiums for that insurance have been paid in full at the date of that letter.

7.4 The Supplier shall maintain the above mentioned insurances covering (without limitation) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market and with reputable insurers

lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than the amounts set out above for any one occurrence or series of occurrences arising out of any one event, provided always that such insurance is available at commercially reasonable rates in the insurance market at large.

- 7.5 Any increased or additional premium required by insurers by reason of the Supplier's own claims record or other acts, omissions, matters or things particular to the Supplier shall be deemed to be within commercially reasonable rates.
- 7.6 The Supplier shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in the insurance market at large in order that the Supplier and the Employer can discuss means of best protecting the respective positions of the Employer and the Supplier in respect of the Services in the absence of such insurance.
- 7.7 The Supplier shall fully co-operate with any measures reasonably required by the Employer including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Supplier in respect of the net cost of such insurance to the Supplier above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.

8. LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Supplier under this agreement after six years from the date of making good of defects of all of the Project.

9. ASSIGNMENT

- 9.1 The Parties may not assign the benefit of this agreement without the other parties written consent, such consent not to be unreasonably withheld:

10. NOTICES

- 10.1 Any notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:
- (a) [SUPPLIER]: [CONTACT] [ADDRESS]
 - (b) [BENEFICIARY]: [CONTACT] [ADDRESS]
 - (c) [EMPLOYER]: [CONTACT] [ADDRESS]

or as otherwise specified by the relevant party by notice in writing to each other party.

- 10.2 A notice shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
 - (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 10.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.
- 10.4 This clause shall not apply to the service of any proceedings or other documents in any legal action.

11. THIRD PARTY RIGHTS

- 11.1 A person who is not a party to this agreement shall not have any rights under or in connection with it.

12. GOVERNING LAW AND JURISDICTION

- 12.1 This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.
- 12.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

13. COUNTERPARTS

- 13.1 This agreement may be executed in one or more counterparts. Any single counterpart or set of counterparts executed by the Parties shall constitute the full and original agreement for all purposes.

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF DIRECTOR]
SUPPLIER] Director

OR

Executed as a deed by [NAME OF SUPPLIER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]
[SIGNATURE OF FIRST DIRECTOR]
Director
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF SUPPLIER] acting by [NAME OF DIRECTOR], a director, in the presence of:
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF DIRECTOR]
BENEFICIARY] Director

OR

Executed as a deed by [NAME OF BENEFICIARY] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]
[SIGNATURE OF FIRST DIRECTOR]
Director
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF BENEFICIARY] acting by [NAME OF DIRECTOR], a director, in the presence of:
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by [NAME OF EMPLOYER]
OR

Signed as a deed by [NAME OF
EMPLOYER] in the presence of:

..... [SIGNATURE OF EMPLOYER]

[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

WEM Collateral warranty to be provided by a Contractor (Lot 4).

DATED

SUPPLIER'S COLLATERAL WARRANTY

relating to a project at

[SHORT DESCRIPTION OF PROPERTY OR WORKS]

between

PARTY 1

and

PARTY 2

and

ENVIRONMENT AGENCY

CONTENTS

CLAUSE

1. Interpretation
2. Comply with the Professional Appointment
3. Step-in rights: Supplier may not terminate or discontinue
4. Step-in rights: Beneficiary may step-in
5. Step-in rights: Supplier's position and Employer's consent
6. No instructions to Supplier by Beneficiary
7. Professional indemnity insurance
8. Liability period
9. Assignment
10. Notices
11. Third party rights
12. Governing law and jurisdiction
13. Counterparts

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Beneficiary**).
- (3) Environment Agency whose registered office is at Horizon House, Deanery Road, Bristol BS1 5AH (**Employer**).

BACKGROUND

- (A) The Employer has engaged the Supplier to carry out [design and] construction work.
- (B) The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the [design and] construction work.
- (C) The Employer requires the Supplier to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Supplier has agreed to enter into this agreement with the Employer and the Beneficiary for the benefit of the Beneficiary.
- (E) The Beneficiary has paid £1 to the Supplier and the Employer as consideration under this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Building Contract: an agreement in writing dated [DATE] between the Employer and the Supplier.

Business Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

Deleterious: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable certificate issued by the British Board.

WEM Framework Agreement: the Water and Environment Management Framework Agreement dated [] made between the Employer and the Supplier

Works: the [design,] construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Supplier under the Building Contract.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words "without limitation" following them.

2. COMPLY WITH BUILDING CONTRACT

2.1 In consideration of the £1 paid by the Beneficiary to the Supplier (receipt of which the Supplier acknowledges) the Supplier warrants to the Beneficiary that:

- (a) it has complied, and shall continue to comply, with its obligations under the Building Contract, including its obligations to:
 - (i) carry out and complete the Works properly; and
 - (ii) use workmanship and materials of the quality and standard specified in the Building Contract;
- (b) without affecting clause 2.1(a), and to the extent that it takes responsibility for the same under the Building Contract, it:
 - (i) has designed, or will design, the Works; and
 - (ii) has selected, or will select, goods, materials, plant and equipment for incorporation in the Works,

with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works; and

- (c) it has not and will not specify or use any products or materials in the Works, which, at the time of specification or use, are Deleterious.

2.2 In proceedings for breach of this clause 2, the Supplier may:

- (a) rely on any limit of liability or other term of the Building Contract; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the employer, under the Building Contract (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Building Contract).

2.3 The Supplier's duties or liabilities under this agreement shall not be negated or diminished by:

- (a) any approval or inspection of:
 - (i) the Works; or
 - (ii) any designs or specifications for the Works; or
- (b) any testing of any work, goods, materials, plant or equipment; or
- (c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Employer.

2.4 This agreement shall not negate or diminish any duty or liability otherwise owed to the Beneficiary by the Supplier.

3. STEP-IN RIGHTS: SUPPLIER MAY NOT TERMINATE OR DISCONTINUE

3.1 The Supplier shall not exercise, or seek to exercise, any right to:

- (a) terminate its employment under the Building Contract; or
- (b) discontinue the [design and] construction of the Works,

for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 10 Business Days' written notice of its intention to do so. Any notice from the Supplier shall specify the grounds for the Supplier's proposed termination or discontinuance.

3.2 If the Building Contract allows the Supplier a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Building Contract shall be extended to take account of the notice period required under clause 3.1.

3.3 The Supplier's right to terminate its employment under the Building Contract, or to discontinue the [design and] construction of the Works, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Supplier, copied to the Employer:

- (a) requiring the Supplier not to terminate its employment or not to discontinue the [design and] construction of the Works under the Building Contract;
- (b) acknowledging that the Beneficiary will assume all the Employer's obligations under the Building Contract; and
- (c) undertaking that the Beneficiary will pay to the Supplier:
 - (i) any sums due and payable to the Supplier under the Building Contract in future; and
 - (ii) any sums then due and payable to the Supplier under the Building Contract that are unpaid.

3.4 If the Beneficiary serves notice on the Supplier under clause 3.3, then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Supplier and the Beneficiary (to the exclusion of the Employer).

3.5 In complying with this clause 3, the Supplier:

- (a) does not waive any breach of the Building Contract or default under the Building Contract by the Employer; and
- (b) may exercise its right to terminate its employment under the Building Contract, or discontinue the [design and] construction of the Works, after the expiry of the notice period referred to in clause 3.1, unless the Supplier's right to terminate or discontinue has ceased under clause 3.3.

4. [STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN]

4.1 Without affecting clause 3.1, if the Beneficiary serves a notice on the Supplier, copied to the Employer, that:

- (a) confirms that the Beneficiary wishes to step-in to the Building Contract; and
- (b) complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Supplier and the Beneficiary (to the exclusion of the Employer).

4.2 The Supplier shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Supplier shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4, the Supplier does not waive any breach of the Building Contract or default under the Building Contract by the Employer.]

5. [STEP-IN RIGHTS: SUPPLIER'S POSITION AND EMPLOYER'S CONSENT]

5.1 The Supplier shall not incur any liability to the Employer by acting in accordance with clause 3 or clause 4.

5.2 The Employer has signed this agreement to confirm its consent to the agreement.

6. NO INSTRUCTIONS TO SUPPLIER BY BENEFICIARY

[Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to the Supplier under this agreement.

7. PROFESSIONAL INDEMNITY INSURANCE

7.1 The Supplier shall maintain professional indemnity insurance for an amount stated in the WEM Framework Agreement for a period beginning on the date of this agreement and ending six years after the date of making good of defects of the Project,

7.2 The Supplier shall not, without the Beneficiary's written consent:

- (a) settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Supplier; or
- (b) by any act or omission lose or affect the Supplier's right to make, or proceed with, that claim against the insurers.

7.3 Whenever the Beneficiary reasonably requests, the Supplier shall send the Beneficiary evidence that the Supplier's professional indemnity insurance is in force,

including, if required by the Beneficiary, an original letter from the Supplier's insurers or brokers confirming:

- (a) the Supplier's then current professional indemnity insurance; and
- (b) that the premiums for that insurance have been paid in full at the date of that letter.

7.4 The Supplier shall maintain the above mentioned insurances covering (without limitation) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market and with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than the amounts set out above for any one occurrence or series of occurrences arising out of any one event, provided always that such insurance is available at commercially reasonable rates in the insurance market at large.

7.5 Any increased or additional premium required by insurers by reason of the Supplier's own claims record or other acts, omissions, matters or things particular to the Supplier shall be deemed to be within commercially reasonable rates.

7.6 The Supplier shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in the insurance market at large in order that the Supplier and the Employer can discuss means of best protecting the respective positions of the Employer and the Supplier in respect of the Project in the absence of such insurance.

7.7 The Supplier shall fully co-operate with any measures reasonably required by the Employer including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Supplier in respect of the net cost of such insurance to the Supplier above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.

8. LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Supplier under this agreement after six years from the date of making good of defects of all of the Works.

9. ASSIGNMENT

9.1 The Parties may not assign the benefit of this agreement without the other parties written consent, such consent not to be unreasonably withheld.

10. NOTICES

10.1 Any notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

- (a) [SUPPLIER]: [CONTACT] [ADDRESS]
- (b) [BENEFICIARY]: [CONTACT] [ADDRESS]
- (c) [EMPLOYER]: [CONTACT] [ADDRESS]

or as otherwise specified by the relevant party by notice in writing to each other party.

10.2 A notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by pre-paid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

10.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

10.4 This clause shall not apply to the service of any proceedings or other documents in any legal action.

11. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under or in connection with it.

12. GOVERNING LAW AND JURISDICTION

12.1 This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

12.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

13. COUNTERPARTS

This agreement may be executed in one or more counterparts. Any single counterpart or set of counterparts executed by the Parties shall constitute the full and original agreement for all purposes

This agreement has been entered into on the date stated at the beginning of it.

Executed as a deed by [NAME OF SUPPLIER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF SUPPLIER] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF BENEFICIARY] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF BENEFICIARY] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF EMPLOYER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]

[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF
EMPLOYER] acting by [NAME OF
DIRECTOR], a director, in the
presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Collateral warranty to be provided by a Sub-Consultant to an employer.

DATED

SUB-CONSULTANT'S COLLATERAL WARRANTY TO EMPLOYER

relating to a project at

[SHORT DESCRIPTION OF PROPERTY OR WORKS]

between

PARTY 1

and

PARTY 2

and

PARTY 3

CONTENTS

CLAUSE

1. Interpretation
2. Comply with the Professional Appointment
3. Step-in rights: Supplier may not terminate or discontinue
4. Step-in rights: Beneficiary may step-in
5. Step-in rights: Supplier's position and Employer's consent
6. No instructions to Supplier by Beneficiary
7. Professional indemnity insurance
8. Liability period
9. Assignment
10. Notices
11. Third party rights
12. Governing law and jurisdiction
13. Counterparts

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Sub-Consultant**).
- (2) Environment Agency whose registered office is at Horizon House, Deanery Road, Bristol BS1 5AH (**Employer**).
- (3) [[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**).]

BACKGROUND

- (A) The Employer has engaged the Supplier to carry out [*describe Suppliers work*].
- (B) The Supplier has engaged the Sub-Consultant to carry out part of that [*describe Suppliers work*].
- (C) The Employer and the Supplier require the Sub-Consultant to enter into a collateral warranty in favour of the Employer.
- (D) The Sub-Consultant has agreed to enter into this agreement with the Supplier and the Employer for the benefit of the Employer.
- (E) The Employer has paid £1 to the Sub-Consultant and the Supplier as consideration under this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Appointment: an agreement in writing dated [DATE] between the Employer and the Supplier.

Business Day: a day (other than a Saturday, Sunday or public holiday in [England]) when banks in [London] are open for business.

Deleterious: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Works or any part of component of the Works; or
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable certificate issued by the British Board.

Intellectual Property Rights: without limitation all intellectual property rights including patents, business service and trade marks and names, designs, registered designs and design rights whether or not registered or capable of registration and the right to apply for and any applications for any of the foregoing, copyrights, database rights, domain names, together with the rights in inventions, methods, processes, drawings, documents, methodologies, utility models semi-conductor chip topography, software, databases, know-how, trade or business secrets and other industrial property, and in each case whether protectable or not and, if protectable, whether an application has been made for protection or not, and all similar industrial, commercial, monopoly or other similar right or asset capable of protection whether present or future, vested or contingent, and wherever protected

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Sub-Contract Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Sub-Contract Works.

Sub-Contract: an agreement in writing dated [DATE] between the Supplier and the Sub-Consultant.

Sub-Contract Works: the [describe works,] referred to in the Sub-Contract, carried out by the Sub-Consultant under the Sub-Contract.

Works: the [*describe works*] referred to in the Appointment, carried out by or on behalf of the Supplier under the Appointment.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension,

or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words "without limitation" following them.

2. COMPLY WITH SUB-CONTRACT

- 2.1 The Sub-Consultant warrants to the Employer that:
- (a) it has complied, and shall continue to comply, with its obligations under the Sub-Contract, including its obligations to carry out and complete the Sub-Contract Works; and
 - (b) without affecting clause 2.1(a), and to the extent that it takes responsibility for the same under the Sub-Contract, it:
 - (i) has designed, or will design, the Sub-Contract Works; and
 - (ii) has selected, or will select, goods, materials, plant and equipment for incorporation in the Sub-Contract Works,with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Sub-Contract Works; and
 - (c) it has not and will not specify or use any products or materials in the Sub-Contract Works, which, at the time of specification or use, are Deleterious.
- 2.2 In proceedings for breach of this clause 2, the Sub-Consultant may:
- (a) rely on any limit of liability or other term of the Sub-Contract; and
 - (b) raise equivalent rights of defence as it would have had, if the Employer had been named as a joint employer, with the Supplier, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the actual Supplier under the Sub-Contract).

2.3 The Sub-Consultant's duties or liabilities under this agreement shall not be negated or diminished by:

- (a) any approval or inspection of:
 - (i) the Works; or
 - (ii) the Sub-Contract Works; or
 - (iii) any designs or specifications for the Property or the Works; or
- (b) any testing of any work, goods, materials, plant or equipment; or
- (c) any omission to approve, inspect or test,

by or on behalf of the Employer or the Supplier.

2.4 This agreement shall not negate or diminish any duty or liability otherwise owed to the Employer by the Sub-Consultant.

3. STEP-IN RIGHTS: SUB-CONSULTANT MAY NOT TERMINATE OR DISCONTINUE

3.1 The Sub-Consultant shall not exercise, or seek to exercise, any right to:

- (a) terminate its employment under the Sub-Contract; or
- (b) discontinue the [design and] construction of the Sub-Contract Works,

for any reason (including any breach on the part of the Supplier) without giving the Employer at least 15 Business Days' written notice of its intention to do so. Any notice from the Sub-Consultant shall specify the grounds for the Sub-Consultant's proposed termination or discontinuance.

3.2 If the Sub-Contract allows the Sub-Consultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Sub-Contract shall be extended to take account of the notice period required under clause 3.1.

3.3 The Sub-Consultant's right to terminate its employment under the Sub-Contract, or to discontinue the [design and] construction of the Sub-Contract Works, shall cease if, within the period referred to in clause 3.1, the Employer gives notice to the Sub-Consultant, copied to the Supplier:

- (a) requiring the Sub-Consultant not to terminate its employment or not to discontinue the [design and] construction of the Sub-Contract Works under the Sub-Contract;
- (b) acknowledging that the Employer (or its nominee) will assume all the Supplier's obligations under the Sub-Contract; and
- (c) undertaking that the Employer or its nominee will pay to the Sub-Consultant:
 - (i) any sums due and payable to the Sub-Consultant under the Sub-Contract in future; and

- (ii) any sums then due and payable to the Sub-Consultant under the Sub-Contract that are unpaid.

3.4 If the Employer or its nominee serves notice on the Sub-Consultant under clause 3.3, then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Consultant and the Employer (to the exclusion of the Supplier).

3.5 In complying with this clause 3, the Sub-Consultant:

- (a) does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Supplier; and
- (b) may exercise its right to terminate its employment under the Sub-Contract or discontinue the [design and] construction of the Sub-Contract Works after the expiry of the notice period referred to in clause 3.1, unless the Sub-Consultant's right to terminate or discontinue has ceased under clause 3.3.]

4. [STEP-IN RIGHTS: EMPLOYER MAY STEP-IN

4.1 Without affecting clause 3.1, if the Employer serves a notice on the Sub-Consultant, copied to the Supplier, that:

- (a) confirms that the Employer wishes to step-in to the Sub-Contract; and
- (b) complies with the requirements for a Employer's notice under clause 3.3,

then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Consultant and the Employer (to the exclusion of the Supplier).

4.2 The Sub-Consultant shall assume that, between the Supplier and the Employer, the Employer may give a notice under clause 4.1. The Sub-Consultant shall not enquire whether the Employer may give that notice.

4.3 In complying with this clause 4, the Sub-Consultant does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Supplier.

5. STEP-IN RIGHTS: SUB-CONSULTANT'S POSITION AND SUPPLIER'S CONSENT

5.1 The Sub-Consultant shall not incur any liability to the Supplier by acting in accordance with clause 3 or clause 4.

5.2 The Supplier has signed this agreement to confirm its consent to the agreement.

6. STEP-IN RIGHTS: EMPLOYER'S GUARANTEE

If a Employer's notice under clause 3 or clause 4 refers to the Employer's nominee, the Employer shall be liable to the Sub-Consultant, as guarantor, for the payment of

any sums due and payable from time to time to the Sub-Consultant from the Employer's nominee.

7. NO INSTRUCTIONS TO SUB-CONSULTANT BY EMPLOYER

Unless the Employer has stepped-in under clause 3 or clause 4, the Employer may not give instructions to the Sub-Consultant under this agreement.

8. INTELLECTUAL PROPERTY

8.1 All the Intellectual Property Rights in the Materials provided by the Sub-Consultant in connection with the Project shall be vested in the Employer AND the Sub-Consultant shall (at the request and cost of the Employer) do all things reasonably necessary to vest the said Intellectual Property Rights in the Employer.

8.2 If the Employer so requests and undertakes in writing to pay the Sub-Consultant's reasonable copying charges, the Sub-Consultant shall promptly supply the Employer with conveniently reproducible copies of all or any of the Intellectual Property Rights. The Consultant shall have no liability for any loss or damage whatsoever caused by any person using the Intellectual Property Rights for any purpose other than a purpose connected with the Project.

9. PROFESSIONAL INDEMNITY INSURANCE

9.1 The Sub-Consultant shall maintain professional indemnity insurance for the amount stated and upon the terms stated in the Sub-Contract

9.2 The Sub-Consultant shall not, without the Employer's written consent:

- (a) settle or compromise any claim with the insurers that relates to a claim by the Employer against the Sub-Consultant; or
- (b) by any act or omission lose or affect the Sub-Consultant's right to make, or proceed with, that claim against the insurers.

9.3 Whenever the Employer reasonably requests, the Sub-Consultant shall send the Employer evidence that the Sub-Consultant's professional indemnity insurance is in force, including, if required by the Employer, an original letter from the Sub-Consultant's insurers or brokers confirming:

- (a) the Sub-Consultant's then current professional indemnity insurance; and
- (b) that the premiums for that insurance have been paid in full at the date of that letter.]

9.4 The Sub-Consultant shall maintain the above mentioned insurances covering (without limitation) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market and with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of

indemnity of not less than the amounts set out above for any one occurrence or series of occurrences arising out of any one event, provided always that such insurance is available at commercially reasonable rates in the insurance market at large

- 9.5 Any increased or additional premium required by insurers by reason of the Sub-Consultant's own claims record or other acts, omissions, matters or things particular to the Sub-Consultant shall be deemed to be within commercially reasonable rates
- 9.6 The Sub-Consultant shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in the insurance market at large in order that the Sub-Consultant and the Employer can discuss means of best protecting the respective positions of the Employer and the Sub-Consultant in respect of the Framework Agreement in the absence of such insurance.
- 9.7 The Sub-Consultant shall fully co-operate with any measures reasonably required by the Employer including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Sub-Consultant in respect of the net cost of such insurance to the Sub-Consultant above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.

10. LIABILITY PERIOD

The Employer may not commence any legal action against the Sub-Consultant under this agreement after six years from the date of making good of defects of all of the Works.

11. ASSIGNMENT

- 11.1 The Parties may not assign the benefit of this agreement without the other parties written consent, such consent not to be unreasonably withheld.

12. NOTICES

- 12.1 Any notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

- (a) [SUB-CONSULTANT]: [CONTACT] [ADDRESS]
- (b) [EMPLOYER]: [CONTACT] [ADDRESS]
- (c) [SUPPLIER]: [CONTACT] [ADDRESS]

or as otherwise specified by the relevant party by notice in writing to each other party.

- 12.2 A notice shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
 - (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 12.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.
- 12.4 This clause shall not apply to the service of any proceedings or other documents in any legal action.

13. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under or in connection with it.

14. GOVERNING LAW AND JURISDICTION

- 14.1 This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.
- 14.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

15. COUNTERPARTS

- 15.1 This agreement may be executed in one or more counterparts. Any single counterpart or set of counterparts executed by the Parties shall constitute the full and original agreement for all purposes

This agreement has been entered into on the date stated at the beginning of it.

Executed as a deed by [NAME OF
SUB-CONSULTANT] acting by
[NAME OF FIRST DIRECTOR], a
director and [NAME OF SECOND
DIRECTOR OR SECRETARY], [a
director **OR** its secretary]

.....
[SIGNATURE OF FIRST
DIRECTOR]
Director
.....
[SIGNATURE OF SECOND
DIRECTOR OR SECRETARY]

[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF SUB-CONSULTANT] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF EMPLOYER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF EMPLOYER] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF SUPPLIER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF SUPPLIER] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Collateral warranty to be provided by a sub-contractor to an employer.

DATED

SUB-CONTRACTOR'S COLLATERAL WARRANTY TO EMPLOYER

relating to a project at

[SHORT DESCRIPTION OF PROPERTY OR WORKS]

between

PARTY 1

and

PARTY 2

and

PARTY 3

CONTENTS

CLAUSE

1. Interpretation
2. Comply with the Professional Appointment
3. Step-in rights: Supplier may not terminate or discontinue
4. Step-in rights: Beneficiary may step-in
5. Step-in rights: Supplier's position and Employer's consent
6. No instructions to Supplier by Beneficiary
7. Professional indemnity insurance
8. Liability period
9. Assignment
10. Notices
11. Third party rights
12. Governing law and jurisdiction
13. Counterparts

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Sub-Contractor**).
- (2) Environment Agency whose registered office is at Horizon House, Deanery Road, Bristol BS1 5AH (**Employer**).
- (3) [[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**).]

BACKGROUND

- (A) The Employer has engaged the Contractor to carry out [design and] construction work.
- (B) The Contractor has engaged the Sub-Contractor to carry out part of that [design and] construction work.
- (C) The Employer and the Contractor require the Sub-Contractor to enter into a collateral warranty in favour of the Employer.
- (D) The Sub-Contractor has agreed to enter into this agreement with the Contractor and the Employer for the benefit of the Employer.
- (E) The Employer has paid £1 to the Sub-Contractor and the Contractor as consideration under this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Building Contract: an agreement in writing dated [DATE] between the Employer and the Contractor.

Business Day: a day (other than a Saturday, Sunday or public holiday in [England]) when banks in [London] are open for business.

Deleterious: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Works or any part of component of the Works; or

- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable certificate issued by the British Board.

Intellectual Property Rights: without limitation all intellectual property rights including patents, business service and trade marks and names, designs, registered designs and design rights whether or not registered or capable of registration and the right to apply for and any applications for any of the foregoing, copyrights, database rights, domain names, together with the rights in inventions, methods, processes, drawings, documents, methodologies, utility models semi-conductor chip topography, software, databases, know-how, trade or business secrets and other industrial property, and in each case whether protectable or not and, if protectable, whether an application has been made for protection or not, and all similar industrial, commercial, monopoly or other similar right or asset capable of protection whether present or future, vested or contingent, and wherever protected

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Sub-Contract Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Sub-Contract Works.

Sub-Contract: an agreement in writing dated [DATE] between the Contractor and the Sub-Contractor.

Sub-Contract Works: the [design,] construction and completion of the building works referred to in the Sub-Contract, carried out by the Sub-Contractor under the Sub-Contract.

Works: the [design,] construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words "without limitation" following them.

2. COMPLY WITH SUB-CONTRACT

- 2.1 The Sub-Contractor warrants to the Employer that:
- (a) it has complied, and shall continue to comply, with its obligations under the Sub-Contract, including its obligations to:
 - (i) carry out and complete the Sub-Contract Works properly; and
 - (ii) use workmanship and materials of the quality and standard specified in the Sub-Contract;
 - (b) without affecting clause 2.1(a), and to the extent that it takes responsibility for the same under the Sub-Contract, it:
 - (i) has designed, or will design, the Sub-Contract Works; and
 - (ii) has selected, or will select, goods, materials, plant and equipment for incorporation in the Sub-Contract Works,

with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Sub-Contract] Works; and
 - (c) it has not and will not specify or use any products or materials in the Sub-Contract Works, which, at the time of specification or use, are Deleterious.

- 2.2 In proceedings for breach of this clause 2, the Sub-Contractor may:
- (a) rely on any limit of liability or other term of the Sub-Contract; and
 - (b) raise equivalent rights of defence as it would have had, if the Employer had been named as a joint employer, with the Contractor, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the actual contractor under the Sub-Contract).

- 2.3 The Sub-Contractor's duties or liabilities under this agreement shall not be negated or diminished by:

- (a) any approval or inspection of:
 - (i) the Works; or
 - (ii) the Sub-Contract Works; or
 - (iii) any designs or specifications for the Property or the Works; or
- (b) any testing of any work, goods, materials, plant or equipment; or
- (c) any omission to approve, inspect or test,

by or on behalf of the Employer or the Contractor.

- 2.4 This agreement shall not negate or diminish any duty or liability otherwise owed to the Employer by the Sub-Contractor.

3. STEP-IN RIGHTS: SUB-CONTRACTOR MAY NOT TERMINATE OR DISCONTINUE

- 3.1 The Sub-Contractor shall not exercise, or seek to exercise, any right to:

- (a) terminate its employment under the Sub-Contract; or
- (b) discontinue the [design and] construction of the Sub-Contract Works,

for any reason (including any breach on the part of the Contractor) without giving the Employer at least 15 Business Days' written notice of its intention to do so. Any notice from the Sub-Contractor shall specify the grounds for the Sub-Contractor's proposed termination or discontinuance.

- 3.2 If the Sub-Contract allows the Sub-Contractor a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Sub-Contract shall be extended to take account of the notice period required under clause 3.1.

- 3.3 The Sub-Contractor's right to terminate its employment under the Sub-Contract, or to discontinue the [design and] construction of the Sub-Contract Works, shall cease if, within the period referred to in clause 3.1, the Employer gives notice to the Sub-Contractor, copied to the Contractor:

- (a) requiring the Sub-Contractor not to terminate its employment or not to discontinue the [design and] construction of the Sub-Contract Works under the Sub-Contract;
 - (b) acknowledging that the Employer (or its nominee) will assume all the Contractor's obligations under the Sub-Contract; and
 - (c) undertaking that the Employer or its nominee will pay to the Sub-Contractor:
 - (i) any sums due and payable to the Sub-Contractor under the Sub-Contract in future; and
 - (ii) any sums then due and payable to the Sub-Contractor under the Sub-Contract that are unpaid.
- 3.4 If the Employer or its nominee serves notice on the Sub-Contractor under clause 3.3, then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Contractor and the Employer (to the exclusion of the Contractor).
- 3.5 In complying with this clause 3, the Sub-Contractor:
- (a) does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor; and
 - (b) may exercise its right to terminate its employment under the Sub-Contract or discontinue the [design and] construction of the Sub-Contract Works after the expiry of the notice period referred to in clause 3.1, unless the Sub-Contractor's right to terminate or discontinue has ceased under clause 3.3.]
- 4. [STEP-IN RIGHTS: EMPLOYER MAY STEP-IN**
- 4.1 Without affecting clause 3.1, if the Employer serves a notice on the Sub-Contractor, copied to the Contractor, that:
- (a) confirms that the Employer wishes to step-in to the Sub-Contract; and
 - (b) complies with the requirements for a Employer's notice under clause 3.3,
- then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Contractor and the Employer (to the exclusion of the Contractor).
- 4.2 The Sub-Contractor shall assume that, between the Contractor and the Employer, the Employer may give a notice under clause 4.1. The Sub-Contractor shall not enquire whether the Employer may give that notice.
- 4.3 In complying with this clause 4, the Sub-Contractor does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor.

5. STEP-IN RIGHTS: SUB-CONTRACTOR'S POSITION AND CONTRACTOR'S CONSENT

5.1 The Sub-Contractor shall not incur any liability to the Contractor by acting in accordance with clause 3 or clause 4.

5.2 The Contractor has signed this agreement to confirm its consent to the agreement.

6. STEP-IN RIGHTS: EMPLOYER'S GUARANTEE

If a Employer's notice under clause 3 or clause 4 refers to the Employer's nominee, the Employer shall be liable to the Sub-Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Contractor from the Employer's nominee.

7. NO INSTRUCTIONS TO SUB-CONTRACTOR BY EMPLOYER

Unless the Employer has stepped-in under clause 3 or clause 4, the Employer may not give instructions to the Sub-Contractor under this agreement.

8. INTELLECTUAL PROPERTY

8.1 All the Intellectual Property Rights in the Materials provided by the Sub-Contractor in connection with the Project shall be vested in the Employer AND the Sub-Contractor shall (at the request and cost of the Employer) do all things reasonably necessary to vest the said Intellectual Property Rights in the Employer.

8.2 If the Employer so requests and undertakes in writing to pay the Sub-Contractor's reasonable copying charges, the Sub-Contractor shall promptly supply the Employer with conveniently reproducible copies of all or any of the Intellectual Property Rights. The Consultant shall have no liability for any loss or damage whatsoever caused by any person using the Intellectual Property Rights for any purpose other than a purpose connected with the Project.

9. PROFESSIONAL INDEMNITY INSURANCE

9.1 The Sub-Contractor shall maintain professional indemnity insurance for the amount stated and upon the terms stated in the Sub-Contract

9.2 The Sub-Contractor shall not, without the Employer's written consent:

- (a) settle or compromise any claim with the insurers that relates to a claim by the Employer against the Sub-Contractor; or
- (b) by any act or omission lose or affect the Sub-Contractor's right to make, or proceed with, that claim against the insurers.

9.3 Whenever the Employer reasonably requests, the Sub-Contractor shall send the Employer evidence that the Sub-Contractor's professional indemnity insurance is in

force, including, if required by the Employer, an original letter from the Sub-Contractor's insurers or brokers confirming:

- (a) the Sub-Contractor's then current professional indemnity insurance; and
- (b) that the premiums for that insurance have been paid in full at the date of that letter.]

9.4 The Sub-Contractor shall maintain the above mentioned insurances covering (without limitation) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market and with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than the amounts set out above for any one occurrence or series of occurrences arising out of any one event, provided always that such insurance is available at commercially reasonable rates in the insurance market at large.

9.5 Any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.

9.6 The Sub-Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in the insurance market at large in order that the Sub-Contractor and the Employer can discuss means of best protecting the respective positions of the Employer and the Sub-Contractor in respect of the Works in the absence of such insurance.

9.7 The Sub-Contractor shall fully co-operate with any measures reasonably required by the Employer including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Sub-Contractor in respect of the net cost of such insurance to the Sub-Contractor above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.

10. LIABILITY PERIOD

The Employer may not commence any legal action against the Sub-Contractor under this agreement after six years from the date of making good of defects of all of the Works.

11. ASSIGNMENT

11.1 The Parties may not assign the benefit of this agreement without the other parties written consent, such consent not to be unreasonably withheld.

12. NOTICES

12.1 Any notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

- (a) [SUB-CONTRACTOR]: [CONTACT] [ADDRESS]
- (b) [EMPLOYER]: [CONTACT] [ADDRESS]
- (c) [CONTRACTOR]: [CONTACT] [ADDRESS]

or as otherwise specified by the relevant party by notice in writing to each other party.

12.2 A notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

12.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

12.4 This clause shall not apply to the service of any proceedings or other documents in any legal action.

13. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under or in connection with it.

14. GOVERNING LAW AND JURISDICTION

14.1 This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.

14.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

15. COUNTERPARTS

15.1 This agreement may be executed in one or more counterparts. Any single counterpart or set of counterparts executed by the Parties shall constitute the full and original agreement for all purposes

This agreement has been entered into on the date stated at the beginning of it.

Executed as a deed by [NAME OF SUB-CONTRACTOR] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF SUB-CONTRACTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF EMPLOYER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF EMPLOYER] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF CONTRACTOR] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director

.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF CONTRACTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Schedule 20 – Project Bank Account

TRUST DEED

This Trust Deed is made between the *Employer*, the *Contractor* and the Subcontractors (the *parties*).

Terms in this Trust Deed have the meanings given to them in the contract between and..... for.....(the *works*) and have been applied into the contracts between the *Contractor* and Subcontractors to give them affect.

Background The *Employer* and the *Contractor* have entered into a contract for the *works*. The Subcontractors have entered into contracts with the Contractor in connection with the works.

The *Employer* and the *Contractor* have established a Project Bank Account to make provision for payment to the *Contractor* and the Subcontractors.

Agreement The *parties* to this Trust Deed agree that

- sums due to the *Contractor* and Subcontractors and set out in the Bank Mandate and authorisation are held in trust in the Project Bank Account for distribution to the Subcontractors in accordance with the banking arrangements applicable to the Project Bank Account,
- further Additional Subcontractors may be added as *parties* to this deed with the agreement of the *Employer* and *Contractor*. The agreement of the *Employer* and *Contractor* is treated as agreement by the Subcontractors,
- this Trust Deed is subject to English law,
- the benefits under this Trust Deed may not be assigned.
- The *Contractor* shall ensure that the *Employer* shall be able to view Project Bank Account transactions either on line or where this is not practicable by supplying Project Bank Account statements to the *Employer* on a monthly basis.
- Any interest paid by the bank in respect of the monies held in the Project Bank Account shall belong to the *Contractor* and may be withdrawn by it on conclusion of the works under the Contract.
- Any bank charges, money transmission costs and other disbursements incurred in the establishment and operation of the Project Bank Account shall be borne by the *Contractor*.
- Disputes or differences relating to this Trust Deed are to be referred to the English Courts.

- This Trust Deed may be executed in one or more counterparts. Any single counterpart or set of counterparts executed by the *parties* shall constitute the full and original Trust Deed for all purposes.

Executed as a deed on

SIGNED as a Deed on behalf of
the above named **ENVIRONMENT
AGENCY** by [] acting
Pursuant to a Power of Attorney
Dated [] 20[]
in the presence of

Environment Agency
by its Attorney

.....

JOINING DEED

This agreement is made between the *Employer*, the *Contractor* and(the Additional Subcontractor).

Terms in this deed have the meanings given to them in the contract between andfor.....(the *works*) and have been applied into the contracts between the Contractor and Subcontractors to give then affect.

Background

The *Employer* and the *Contractor* have entered into a contract for the works. The Subcontractor have entered into contracts with the *Contractor* in connection with the works.

The *Employer* and the *Contractor* have established a Project Bank Account to make provision for payment to the *Contractor* and the Subcontractor.

The *Employer*, the *Contractor* and the Subcontractor have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the Additional Subcontractor may join that deed.

Agreement

The Parties to this deed agree that

- the Additional Subcontractor becomes a party to the Trust Deed from the date set out below,
- this deed is subject to English law,
- the benefits under this deed may not be assigned.
- disputes or differences relating to this Joining Deed are to be referred to the English Courts.

Executed as a deed on.....

by

..... (*Employer*)

..... (*Contractor*)

..... (Additional Subcontractor)

Z Clauses to be inserted into Work Package, Package Order or Time Charge Order.

Z3: Project Bank Account

- Defined terms Z3.1 (1) The Authorisation is a document authorising the Project Bank to make payments to the *Contractor* and Subcontractors.
- (2) Project Bank is the Bank where the Project Bank Account is held
- (3) Project Bank Account is the account used to receive payments from the *Employer* and make payments to the *Contractor* and Subcontractors
- (4) Subcontractors for the purposes of this clause Z3 is any subcontractor; consultant or supplier as the case may be mentioned in the Trust Deed or that may be added to the Trust Deed pursuant to Z3.6
- (5) Trust Deed is an agreement between the *Employer*, the *Contractor* and Subcontractors which contains provisions for administering the Project Bank Account.
- Project Bank Account Z3.2 The *Contractor* establishes the Project Bank Account with the Project Bank within one week of the *Contract Date*.
- Z3.3 Unless stated otherwise in the *Contract Data*, the *Contractor* pays any charges and is paid any interest made by the Project Bank.
- Z3.4 The *Contractor* submits to the *Project Manager* for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The *Contractor* provides to the *Project Manager* copies of communications with the Project Bank in connection with the Project Bank Account.
- Subcontractors Z3.5 The *Contractor* includes in his contracts with Subcontractors the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The *Contractor* notifies the Subcontractors of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.

Z3.6 The *Contractor* submits proposals to the *Project Manager* for adding a Subcontractor as a beneficiary of the Project Bank Account through the Deed of Adherence that is set out in schedule 1 to the Trust Deed. A reason for not accepting is that the addition of the Subcontractor does not comply with the Works Information or it has not been accepted by the *Project Manager* as provided for in clause 26 of this contract.

Payments

Z3.7 On or before each assessment date, the *Contractor* submits to the *Project Manager* an application for payment, and shows in the application the amounts due to Subcontractors in accordance with their contracts.

Z3.8 No later than one week before the final date for payment, the *Employer* makes payment to the Project Bank Account of the amount which is due to be paid to the *Contractor*.

Z3.9 The *Contractor* makes payment to the Project Bank Account of any amount not paid by the Employer and any amount required to make payment in full to Subcontractors.

Z3.10 The *Contractor* prepares the Authorisation, setting out the sums due to Subcontractors as assessed by the *Contractor* and to the *Contractor* for the balance of the certified payment. After signing the Authorisation, the *Contractor* submits it to the *Project Manager* for signature by the *Employer* and submission to the Project Bank.

Z3.11 The *Contractor* and Subcontractors receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.

Z3.12 The *Employer* may deduct from the payment due to the Project Bank Account retention that applies to this contract under Option X16 (if incorporated) and/or any deduction to be made by the Employer following the issue of a pay less notification in accordance with clause Y2.3 of Option Y(UK2).

Z3.13 A payment which is due from the *Contractor* to the *Employer* is not made through the Project Bank Account.

Effect of payment Z3.14 Payments made from the Project Bank Account are treated as payments from the *Employer* to the *Contractor* in accordance with this contract or from the *Contractor* or Subcontractor to Subcontractors in accordance with their contracts as applicable.

Trust Deed Z3.15 The *Employer*, the *Contractor* and Subcontractors sign the Trust Deed before the first assessment date.

Termination Z3.16 If the *Project Manager* issues a termination certificate, no further payment are made into the Project Bank Account.

ADDITIONAL CONTRACT DATA ENTRIES

Contract Data part one – Data provided by the *Employer*

If the *Employer* is to pay any charges and is paid interest made by the *Project Bank*, add the following add the following to the Contract Data part one.

- The *Employer* is to pay any bank charges money transmission costs and any other disbursements incurred in the operation of the Project Bank Account and is paid interest made by the *Project Bank*.

Contract Data part two – Data provided by the *Contractor*

Add the following to the Contract Data part two

- the *Project Bank* is
- *Subcontractor(s)* are

Schedule 21

Supplier's Tender Document (with Price Workbook)