**Highways England**

**Specialist Professional & Technical Services Framework**

**Form of Agreement**

**Joint Venture version**

**September 2015**

**THIS AGREEMENT BY DEED is made the [.................] day of [.......................] [20..]**

**PARTIES:**

1. **HIGHWAYS ENGLAND COMPANY LIMITED** (company no 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ("the *Employer”*); and

2.[                                     ] Joint Venture comprising [ ][“XX”] a company incorporated in and in accordance with the laws of [                     ] with registered number [               ] whose registered office is at [                                               ] and [ ] [“YY”] a company incorporated in and in accordance with the laws of [                     ] with registered number [               ] whose registered office is at [                                               ] and [ ] [“ZZ”] a company incorporated in and in accordance with the laws of [                     ] with registered number [               ] whose registered office is at [                                               ] (“together referred to as the “the *Supplier*”).]

**RECITALS**

1. The *Employer* wishes to appoint a number of suppliers to provide services under the Highways England Specialist Professional and Technical Services Framework and for that purpose has issued [invitations to tender] (including the Framework Information and *scope*) to, amongst others, the *Supplier*.
2. In response to the *Employer’s* invitation to tender, the *Supplier* has submitted a tender to carry out and complete the following *services*: *[enter description of the services]* in accordance with the *scope*.
3. [The *Employer* has accepted the *Supplier’s* tender and now wishes to appoint the *Supplier* on the terms of this Agreement.] *[specific Lots which the Supplier has been appointed to will be referred to in the recitals]*

**OPERATIVE PROVISIONS**

# Definitions and Interpretation

1.1 In this Agreement (including the Recitals) words and expressions have the same meaning given to them in the Conditions referred to below.

* 1. The Conditions are:
* the clauses of the NEC3 Framework Contract (April 2013),
* the core clauses and the clauses for the main Option E, dispute resolution Option [W1 or W2 as stated in the Time Charge Order]and secondary Options ([X2], [X5], X11, [X13], [X18], [X20], [Y(UK)1], [Y(UK)2], Y(UK)3 as stated in the Time Charge Order), and Z of the NEC3 Professional Services Contract April 2013 for Time Charge Orders and
* the core clauses and the clauses for the main Options [A or C or E], dispute resolution Option [W1 or W2 as stated in the Package Order]and secondary Options ([X2], [X5], X11, [X13], [X18], [X20], [Y(UK)1], [Y(UK)2], Y(UK)3 as stated in the Package Order) and Z of the NEC3 Professional Services Contract April 2013 for Package Orders.

# Joint and Several Liability

## Each of [XX] and [YY] and [ZZ] shall be jointly and severally liable to the *Employer* for the performance of the terms and fulfilment of the obligations under this Agreement

## The *Consultant* nominates [*name of individual*] to act as the *Consultant*’s representative for the purposes of this Agreement and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Consultant* shall notify the *Employer* in advance of any change to the identity of the *Consultant*’s representative named in this clause.

## Each of [XX] and [YY] and [ZZ] will give [4] weeks notice to the *Employer* of any proposed termination of the joint venture arrangement.

## If the joint venture arrangement is terminated by either [XX] or [YY] or [ZZ] it shall be treated as a fundamental breach of contract and shall entitle the *Employer* to terminate this Agreement immediately. On any termination under this clause the *Employer* shall have no liability to either [XX] or [YY] or [ZZ] for loss of contract, loss of profit or any other loss suffered by either [XX] or [YY] or [ZZ] as a consequence of or in connection with the termination.

2.5 Termination of this Agreement shall not affect or limit the rights and remedies of either Party in relation to any act, omission or default of the other Party prior to the termination.

# Agreement by Deed

3.1. In consideration of the *Employer* making payment in accordance with the Conditions, the *Supplier* hereby agrees to Provide the Services in accordance with this Agreement by Deed.

1. **Documents**

4.1 The documents forming part of this Agreement are:

1. the Conditions
2. the Contract Data
3. the Framework Information
4. the Scope
5. Tender Amendments *[insert references or delete]*
6. the *Supplier’s* tender
7. the *quotation information*

4.2. The several documents forming part of this Agreement are to be taken as mutually explanatory of one another.

# Publication of Information

5.1 The *Supplier* acknowledges that the *Employer* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Procurement Policy Note entitled “*Published guidance on implementing requirements for greater transparency in central Government procurement and contracting*” (Information Note 02/11 dated 18 January 2011, or any later revision), except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Supplier* before deciding whether information is exempt, but the *Supplier* acknowledges that the *Employer* has the final decision. The *Supplier* co-operates with and assists the *Employer* to publish this contract in accordance with the *Employer*'sobligation.

5.2 The *Supplier* acknowledges that the *Employer* is obliged to publish the provisions of this contract in accordance with the Cabinet Office, Procurement Policy Note 13/15 Increasing Transparency of Contract Information to the Public, the *Employer* is obliged to take forward the publishing of a range information related to this contract, except to the minimal extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Supplier* before deciding whether information is exempt, but the *Supplier* acknowledges that the *Employer* has the final decision. The *Supplier* co-operates with and assists the *Employer* to publish the information related to this contract in accordance with the *Employer*'sobligation

# Collaboration Agreement

6.1 If so required in writing by the *Employer* at any time prior to the *end date* the *Supplier* shall execute one or more collaboration agreements in the form set out in the Scope in order to allow any Central Government Departments and Agencies, non-departmental public bodies, Local Government and Local Government Bodies, the House of Lords, the House of Commons, and other public sector organisations in the UK to place a Package Order with the *Supplier* for the provision of services in accordance with the terms of the relevant collaboration agreement.

**Delivered** as a deed on the date of this document.

*[Use one of the following forms of execution]*

|  |
| --- |
| OPTION 1 *[execution by a company under seal]*  |
| Executed as a deed by the *Supplier* by affixing his common seal in the presence of: |  |
|  |  |
|  | Director |
|  |  |
|  | Director/Company Secretary |
| OPTION 2 *[execution by a company as a deed by two signatures]*  |
| Executed as a deed by the *Supplier* by [                                  ]…………………………………………….. | (print name of Director)signature of Director |
| and [                                  ]…………………………………………….. | (print name of Director/Company Secretary)signature of Director/Company Secretary |
| OPTION 3 *[execution by a company as a deed by one signature in the presence of a witnesss]*  |
| Executed as a deed by the *Supplier* by [                                  ]…………………………………………….. | (print name of Director)signature of Director |
| in the presence of [                                  ]……………………………………………..……………………………………………..…………………………………………….. | (print name of witness)signature of witnessaddress of witnessoccupation of witness |
| OPTION 4 *[execution by a partnership. All partners should execute unless a valid partnership resolution or power of attorney is produced which specifies otherwise. Repeat attestation block as often as necessary.]* |
| Executed as a deed by the *Supplier* by [                                  ]…………………………………………….. | (print name of partner)signature of partner |
| in the presence of [                                  ]……………………………………………..……………………………………………..…………………………………………….. | (print name of witness)signature of witnessaddress of witnessoccupation of witness |

|  |  |
| --- | --- |
| OPTION 1a *[execution by a Highways England under seal]*Executed as a deed by **HIGHWAYS ENGLAND COMPANY LIMITED** by affixing his common seal in the presence of: | )) |
|  |  |
|  | Director |
|  |  |
|  | Director/Secretary |
|  |  |
| OPTION 1b *[execution by a Highways England under seal]*Executed as a deed by **HIGHWAYS ENGLAND COMPANY LIMITED** by affixing his common seal in the presence of: | )) |
|  |  |
|  | Authorised Signatory |
|  |  |
|  | Authorised Signatory |
|  |  |
| OPTION 2a Executed as a deed by **HIGHWAYS ENGLAND COMPANY LIMITED** acting by: | )) |
|  |  |
|  | Director |
|  |  |
|  | Director/Secretary |
|  |  |
| OPTION 2b Executed as a deed by **HIGHWAYS ENGLAND COMPANY LIMITED** acting by: | )) |
|  |  |
|  | Authorised Signatory |
|  |  |
|  | Authorised Signatory |
|  |  |