

**National Highways Limited**

**NEC4 Professional Service Short Contract**

**(June 2017 with amendments January 2019 and October 2020)**

**FORM OF AGREEMENT BY DEED**

[All text in red or contained in the comment boxes are for the Procurement Officer to review and must be removed when finalising the document.

Information added by the Procurement (red text) must match what is contained in the Contract Data & Scope for this tender.

Black text must not be changed and any proposed departures from the approach set out in this model Form of Agreement must be discussed and agreed between the Procurement Officer and the Contract Development & Assurance (CD&A) Team.]

CONTENTS AMENDMENT SHEET

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Issue No.** | **Revision No.** | **Amendments** | **Initials** | **Date** |
| 3 | 1 | For use with Jan 2021 model. Not previously provided. FOA Streamlined with AB. Reissued for use with Jan 2021 models. | RE | 01/04/2021 |
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**NATIONAL HIGHWAYS LIMITED**

**NEC4 Professional Service Short Contract**

**(June 2017 with amendments January 2019**

**and October 2020)**

**[NAME OF CONSULTANT/ JOINT VENTURE]**

**FORM OF AGREEMENT BY DEED**

relating to *services*

of the [...] [identify scheme(s)]

Contract Reference Number [compiler to enter appropriate Share reference number]

**THIS AGREEMENT BY DEED is made the […] day of […] [20…]** [National Highways procurement to enter date the National Highways seal is affixed]

**PARTIES**

1. **NATIONAL HIGHWAYS LIMITED**, a company incorporated in and in accordance with the laws of England, having as its registered number 09346363 of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, England, GU1 4LZ (“the *Client*”) and

*[For use by single consultant state the following]*

1. **[…]** a company incorporated in and in accordance with the laws of **[…]**, having as its registered number **[…]** and its registered office at **[…]** (the “*Consultant*”).

**OR**

*[For use by joint venture consultants state the following]*

1. **[…]** a joint venture comprising **[…]** [“X”] a company incorporated in and in accordance with the laws of **[…]**, with registered number **[…]** whose registered office is at **[…]** and **[…]** [“Y”] a company incorporated in and in accordance with the laws of **[…]**, with registered number **[…]** whose registered office is at **[…]** (together referred to as “the *Consultant*”).

**RECITALS**

1. The *Client* wishes to appoint a consultant to provide the service and for that purpose has issued invitations to tender to, amongst others, the *Consultant*.
2. In response to the *Client’s* invitation to tender, the *Consultant* has submitted a tender to Provide the Service in conformity with the Conditions of Contract, the Contract Data and the Scope.
3. The *Client* has accepted the *Consultant’s* tender and now wishes to appoint the *Consultant* on the terms of this Agreement.

**OPERATIVE PROVISIONS**

1. **Definitions and Interpretation**
   1. In this Agreement (including the Recitals) words and expressions have the same meaning given to them in the Conditions referred to below.
2. **Contract Documents**
   1. The following documents form part of this Agreement:

* the NEC4 Professional Service Short Contract (June 2017 with amendments January 2019 and October 2020) incorporating Z1 [to] Zxx (“the Conditions”);
* the Contract Data, Parts One and Two, and the documents referred to in them;
* Scope;
* Tender Amendments [insert references or delete];
* the *Consultant’s* tender;
* the *price list* and
* [insert additional documents or delete].
  1. The several documents forming part of this Agreement are to be taken as mutually explanatory of one another.

1. **Agreement**
   1. The *Consultant* agrees to Provide the Service for the *Client* in accordance with the provisions of this Agreement.
   2. The *Client* will pay to the *Consultant* the amounts due under and in accordance with the provisions of this Agreement.
2. **Publication of Information**
   1. The *Consultant* acknowledges that the *Client* is obliged to publish the provisions of this contract in accordance with the Crown Commercial Service note entitled “Publication of Central Government Tenders and Contracts” dated November 2017 (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 (Amendment) (EU Exit) Regulations 2018. The *Client* consults with the *Consultant* before deciding whether information is exempt, but the *Consultant* acknowledges that the *Client* has the final decision. The *Consultant* co-operates with and assists the *Client* to publish this contract in accordance with the *Client*'sobligation.
3. **Joint and Several Liability**
   1. Each of [X] and [Y] will be jointly and severally liable to the *Client* for the performance of the terms and fulfilment of the obligations under this Agreement.
   2. The *Consultant* nominates [name of individual] to act as the *Consultant* 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 *Client* in advance of any change to the identity of the *Consultant’s* representative named in this clause.
   3. Each of [X] and [Y] and [Z] will give 26 weeks’ notice to the *Client* of any proposed termination of the joint venture arrangement.
   4. If the joint venture arrangement is terminated by either [X] or [Y] or [Z] it shall be treated as a fundamental breach of contract and shall entitle the *Client* to terminate this Agreement immediately. On any termination under this clause the *Client* shall have no liability to either [X] or [Y] or [Z] for loss of contracts, loss of profit or any other loss suffered by either [X] or [Y] or [Z] as a consequence of or in connection with the termination.
   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.

|  |  |  |
| --- | --- | --- |
| **Delivered** as a deed on the date of this document. | | |
| **Executed as a deed by affixing the common seal of NATIONAL HIGHWAYS LIMITED in the presence of:** |  | |
|  |  | |
|  | **Authorised Signatory** | |
|  |  | |
|  | **Authorised Signatory** | |
|  |  | |
|  |  | |
| **OPTION 1 *[execution by a company under seal]*** | | |
| Executed as a deed by the *Consultant* by affixing its 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 *Consultant*  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 witness]*** | | |
| Executed as a deed by the *Consultant*  by […]  …………………………………………….. | | (print name of Director)  signature of Director |
| in the presence of […]  ……………………………………………..  ……………………………………………..  …………………………………………….. | | (print name of witness)  signature of witness  address of witness  occupation of witness |