

# NEC4 Engineering and Construction

## Short Contract

FCRM Operational Framework – SW Hub

A contract between

The Environment Agency  
Horizon House  
Deanery Road  
Bristol  
BS1 5AH

And

For

Wessex Eel Passage Improvements (May21)

Contract Forms

- Contract Data
- The *Contractor's* Offer and *Client's* Acceptance
- Price List
- Scope
- Site Information

# Contract Data

## The *Client's* Contract Data

	The <i>Client</i> is	
Name	Environment Agency	
Address for communications	The Environment Agency Horizon House Deanery Road Bristol BS1 5AH	
Address for electronic communications		
The <i>works</i> are	described in the Scope of the Site Specific Pack for the respective site. General project scope requirements are identified in this Overarching Contract Scope	
The <i>site</i> is	For details of each Site see individual Site Boundary Plans within respective Scope supporting documents	
The <i>starting date</i> is	12 October 2021	
The <i>completion date</i> is	31 March 2022	
The <i>delay damages</i> are	£70	Per day per site
The <i>period</i> for reply is	2	weeks
The <i>defects date</i> is	52	weeks after Completion
The <i>defects correction period</i> is	4	weeks
The <i>assessment day</i> is	the last working day	of each month
The <i>retention</i> is	nil	%
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does</b> apply		
The <i>Adjudicator</i> is :		

In the event that a first dispute is referred to adjudication, the referring Party at the same time applies to the Institution of Civil Engineers to appoint an *Adjudicator*. The application to the Institution includes a copy of this definition of the *Adjudicator*. The referring Party pays the administrative charge made by the Institution. The person appointed is also *Adjudicator* for later disputes.

## Contract Data

### The *Client's* Contract Data

The interest rate on late payment is		% per complete week of delay.
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Insert a rate only if a rate less than 0.5% per week of delay has been agreed.

For any one event, the liability of the <i>Contractor</i> to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to	£100,000
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The <i>Client</i> provides this insurance	None
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#### Insurance Table

Event	Cover	Cover provided until
Loss of or damage to the <i>works</i>	The replacement cost	The <i>Client's</i> certificate of Completion has been issued
Loss of or damage to Equipment, Plant and Materials	The replacement cost	The defects Certificate has been issued
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Works	Minimum £5,000,000 in respect of every claim without limit to the number of claims	
Liability for 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	The amount required by the applicable law	
Failure of the <i>Contractor</i> to use the skill and care normally used by professionals providing works similar to the works	Minimum £1,000,000 in respect of every claim without limit to the number of claims	6 years following Completion of the whole of the works or earlier termination

The <i>Adjudicator</i> nominating body is	The Institution of Civil Engineers
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The <i>tribunal</i> is	litigation in the courts
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The *conditions of contract* are the NEC4 Engineering and Construction Short Contract June 2017 and the following additional conditions

**Only enter details here if additional conditions are required.**

Z1.0	Sub-contracting
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Z1.1	The <i>Contractor</i> submits the name of each proposed subcontractor to the <i>Client</i> for acceptance. A reason for not accepting the subcontractor is that their appointment will not allow the <i>Contractor</i> to Provide the Works. The <i>Contractor</i> does not appoint a proposed subcontractor until the <i>Client</i> has accepted them.
Z1.2	Payment to subcontractors and suppliers will be no more than 30 days from receipt of invoice.
Z2.0	Environment Agency as a regulatory authority
Z2.1	The Environment Agency's position as a regulatory authority and as <i>Client</i> under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other.
Z2.2	Where statutory consents must be obtained from the Environment Agency in its capacity as a regulatory authority, the <i>Contractor</i> is responsible for obtaining these and paying fees (unless stated otherwise in the Scope). The <i>Client's</i> acceptance of a tender and the <i>Client's</i> instruction or variation of the works does not constitute statutory approval or consent.
Z2.3	An action by the Environment Agency as regulatory authority is not in its capacity as <i>Client</i> and is not a compensation event.
Z3.0	Confidentiality & Publicity
Z3.1	The <i>Contractor</i> may publicise the works only with the <i>Client's</i> written agreement.
Z4.0	Correctness of Site Information
Z4.1	Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the <i>Client</i> but is not warranted correct. The <i>Contractor</i> checks the correctness of any such Site Information they rely on for the purpose of Providing the Works.
Z5.0	The Contracts (Rights of Third Parties) Act 1999
Z5.1	For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this contract confers or purports to confer on a third party any benefit or any right to enforce a term of this contract.
Z6.0	Design
Z6.1	Where design is undertaken, it is the obligation of the <i>Contractor</i> to ensure the use of skill and care normally used by professionals providing similar design services.
Z6.2	The <i>Contractor</i> designs the parts of the works which the Scope states they are to design.
Z6.3	The <i>Contractor</i> submits the particulars of their design as the Scope requires to the <i>Client</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with either the Scope or the applicable law.  The <i>Contractor</i> does not proceed with the relevant work until the <i>Client</i> has accepted this design.
Z6.4	The <i>Contractor</i> may submit their design for acceptance in parts if the design of each part can be assessed fully.
Z7.0	Change to Compensation Events
Z7.1	Delete the text of Clause 60.1(11) and replace by: The works are affected by any one of the following events <ul style="list-style-type: none"> <li>• War, civil war, rebellion revolution, insurrection, military or usurped power</li> <li>• Strikes, riots and civil commotion not confined to the employees of the <i>Contractor</i> and sub-<i>Contractors</i></li> <li>• Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel</li> <li>• Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device</li> <li>• Natural disaster</li> <li>• Fire and explosion</li> <li>• Impact by aircraft or other device or thing dropped from them</li> </ul>
Z8.0	Framework Agreement
Z8.1	The <i>Contractor</i> shall ensure at all times during this contract it complies with all the obligations and conditions of the Framework Agreement made with the <i>Client</i> .
Z9.0	Termination
Z9.1	Delete the text of Clause 92.3 and replace with: If the <i>Contractor</i> terminates for Reason 1 or 6, the amount due on termination also includes 5% of any excess of a forecast of the amount due at Completion had there been no termination over the amount due on termination assessed as for normal payments.
Z10.0	Data Protection
Z10.1	The requirements of the Data Protection Schedule shall be incorporated into this contract
Z11.0	Liabilities and Insurance
Z11.1	Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.
Z12.0	Packaging

Z12.1	For contracts containing packages of projects the <i>Client's</i> Contract Data, Scope and Site Information particular to an individual project is contained within its Site Specific Pack																																	
Z13.0	Compensation Event Occurrences																																	
Z13.1	<p>Amend the text of Clause 60.1 with the addition of 60.1 (13): The <i>Contractor</i> is prevented by flooding from carrying out all the work on the site for periods of time, each at least one full working day, which are in total more than one seventh of the total number of days between the starting date and the Completion Date. In assessing this event, only the working days which exceed this limit and on which work is prevented by no other cause are taken into account.</p> <p>The flooding trigger level is defined for each site as follows:</p> <ul style="list-style-type: none"><li>• Beer Wall = 4.3mAOD as read off Beer Wall gauge board</li><li>• Brean Cross = 5.0mAOD as read off Brean Cross Sluice upstream gauge board. (see Section S400 in the Brean Cross SSP for in channel working water levels)</li><li>• Hackness Sluice = 3.6mAOD as read off Hackness Sluice gauge board</li></ul>																																	
Z30	<p>Material Price Volatility</p> <p>Pricing uncertainty in relation to Materials is a <i>Client</i> risk for the period 1 July 2021 to 30 June 2022. The <i>base date</i> is 1 July 2021, unless the contract is awarded after that date in which case the <i>base date</i> is the <i>starting date</i>.</p>																																	
Z30.1	<p>Defined terms</p> <p>a) The Base Date Index (B) is the latest available consumer price index before the <i>base date</i>. b) The Latest Index (L) is the latest available <i>Client</i> issued consumer price index before the date of assessment of an amount due. c) The Price Adjustment Factor (PAF) at each date of assessment of an amount due is the total of the products of each proportion stated below multiplied by (L-B)/B for the index linked to it.</p> <table><tr><td>Component</td><td>Proportion</td><td>PAF Impact</td></tr><tr><td>People</td><td>25%</td><td>Nil</td></tr><tr><td>Equipment</td><td>15%</td><td>Nil</td></tr><tr><td>Plant</td><td>5%</td><td>Nil</td></tr><tr><td>Materials</td><td>40%</td><td>To be adjusted</td></tr><tr><td>Subcontractors</td><td>15%</td><td>Nil</td></tr></table>	Component	Proportion	PAF Impact	People	25%	Nil	Equipment	15%	Nil	Plant	5%	Nil	Materials	40%	To be adjusted	Subcontractors	15%	Nil															
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Z30.2	<p>Price Adjustment Factor</p> <p>If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment before 30 June 2022 is used for calculating the price adjustment after that date.</p>																																	
Z30.4	<p>Price Adjustment</p> <p>Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date for the Materials component only (and the corresponding proportion) since the last assessment of the amount due multiplied by (PAF/(1+PAF)) where PAF is the Price Adjustment Factor for the date of the current assessment.</p>																																	
Z30.5	<p>Compensation Events</p> <p>Compensation events to address the price adjustment due to material price volatility should be raised on a monthly basis (where applicable) capturing Defined Cost only for the PWDD increase in month. Forecasted costs should only be considered for the June 2022 period compensation event.</p> <table><tr><td>Assessment Date</td><td>Defined Cost?</td><td>Forecasted Cost?</td></tr><tr><td>31<sup>st</sup> Jul 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Aug 21</td><td>In period costs only</td><td>No</td></tr><tr><td>30<sup>th</sup> Sept 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Oct 21</td><td>In period costs only</td><td>No</td></tr><tr><td>30<sup>th</sup> Nov 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Dec 21</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Jan 22</td><td>In period costs only</td><td>No</td></tr><tr><td>28<sup>th</sup> Feb 22</td><td>In period costs only</td><td>No</td></tr><tr><td>31<sup>st</sup> Mar 22</td><td>In period costs only</td><td>No</td></tr><tr><td>30<sup>th</sup> Apr 22</td><td>In period costs only</td><td>No</td></tr></table>	Assessment Date	Defined Cost?	Forecasted Cost?	31 <sup>st</sup> Jul 21	In period costs only	No	31 <sup>st</sup> Aug 21	In period costs only	No	30 <sup>th</sup> Sept 21	In period costs only	No	31 <sup>st</sup> Oct 21	In period costs only	No	30 <sup>th</sup> Nov 21	In period costs only	No	31 <sup>st</sup> Dec 21	In period costs only	No	31 <sup>st</sup> Jan 22	In period costs only	No	28 <sup>th</sup> Feb 22	In period costs only	No	31 <sup>st</sup> Mar 22	In period costs only	No	30 <sup>th</sup> Apr 22	In period costs only	No
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	31 <sup>st</sup> May 22	In period costs only	No
	30 <sup>th</sup> Jun 22	In period costs only	Forecasted costs for remainder of contract
<p>The Defined Cost for compensation events is assessed using</p> <ul style="list-style-type: none"> <li>- the Defined Cost at <i>base date</i> levels for amounts calculated from rates stated in the Contract Data for People and Equipment and</li> <li>- the Defined Cost current at the date the compensation event was notified, adjusted to the <i>base date</i> by 1+PAF for the last assessment of the amount due before that date, for other amounts.</li> </ul>			

## Contract Data

### The *Contractor's* Contract Data

The <i>Contractor</i> is		
Name	Land and Water	
Address for communications	Land and Water, Weston Yard, Albury, Guildford GU5 9A	
Address for electronic communications	<div></div>	
The <i>fee</i> percentage is	As per Framework	%
The <i>people rates</i> are	As per Framework	
category of person	unit	rate
The <i>published list of Equipment</i> is		As per Framework
The <i>percentage for adjustment for Equipment</i> is		As per Framework

# Contract Data

## The *Contractor's* Offer and *Client's* Acceptance

The *Contractor* offers to Provide the Works in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The offered total of the Prices is £323,977.19

Enter the total of the Prices from the Price List.

Signed on behalf of the *Contractor*

Name

Position Estimator

Signature

Date 31/08/21

The *Client* accepts the *Contractor's* Offer to Provide the Works

Signed on behalf of the *Client*

Name

Position Senior Commercial Officer

Signature

Date 12 October 2021

# Price List

Entries in the first four columns in this Price List are made either by the *Client* or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price Column only: the Unit, Quantity and rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

Item Number	Description	Unit	Quantity	Rate	Price
1. Site A - Beer Wall (River Soway) Tilting Weir <i>The full Scope is described in Site A - Beer Wall Site Specific Packs</i>					
1.1	CDM documentation for <i>Client</i> acceptance/ approval (including CPP, RAMS, Temp Works)	SUM	1	£1,961.25	£1,961.25
1.2	Preconstruction ecological check	SUM	1	£1,875.00	£1,875.00
1.3	Provide a concise photographic pre-construction condition survey report	SUM	1	£687.50	£687.50
1.4	Obtain FRAP	SUM	1	£2,347.00	£2,347.00
1.5	Fabrication of eel pass solution	SUM	1	£31,250.00	£31,250.00
1.6	Installation of eel pass solution	SUM	1	£65,300.86	£65,300.86
1.7	Provision of as constructed record i.e. photographic record and mark up of construction drawings	SUM	1	£687.50	£687.50
1.8	<i>Contractor</i> input into Health and Safety File	SUM	1	£2,961.25	£2,961.25
1.9	Provision of an eel pass Operating and Maintenance Manual	SUM	1	£2,284.50	£2,284.50
2.0	Provision of confined space health and safety requirements. To include 1 x escape set and additional team member(s) i.e. winch top man that will be additional to the installation team as identified within Item 1.6	SUM	1	£15,0000	£15,0000
	<i>Do not insert any additional lines unless formally raised as a clarification</i>				
2. Site B - Brean Cross Sluice <i>The full Scope is described in Site B – Brean Cross Site Specific Packs</i>					
2.1	CDM documentation for <i>Client</i> acceptance/ approval (including PCI, CPP, RAMS, Temp works)	SUM	1	£1,961.25	£1,961.25
2.2	Preconstruction ecological check	SUM	1	£1,875.00	£1,875.00
2.3	Provide a concise photographic pre-construction condition survey report	SUM	1	£687.50	£687.50
2.4	Obtain FRAP	SUM	1	£2,347.00	£2,347.00
2.5	Fabrication of eel pass solution	SUM	1	£56,250.00	£56,250.00
2.6	Installation of eel pass solution	SUM	1	£79,071.63	£65,300.86
2.7	Provision of as constructed record i.e. photographic record and marked up construction drawings	SUM	1	£687.50	£687.50
2.8	<i>Contractor</i> input into Health and Safety File	SUM	1	£2,961.25	£2,961.25



2.9	Provision of an eel pass Operating and Maintenance Manual	SUM	1	£2,284.50	£2,284.50
3.0	Provision of confined space health and safety requirements. To include 2 x escape sets and additional team member(s) i.e. winch top men that will be additional to the installation team as identified within Item 2.6	SUM	1	£25,000.00	£25,000.00
	<i>Do not insert any additional lines unless formally raised as a clarification</i>				
3. Site C - Hackness Sluice <i>The full Scope is described in Site C – Hackness Sluice Site Specific Packs</i>					
3.1	Provide simple design for new fencing arrangement	SUM	1	£2,100.00	£2,100.00
3.2	CDM documentation and sign off (including PCI, CPP, RAMS)	SUM	1	£1,961.25	£1,961.25
3.3	Preconstruction ecological check	SUM	1	£1,875.00	£1,875.00
3.4	Provide a concise photographic pre-construction condition survey report	SUM	1	£687.50	£687.50
3.5	2.4m high x 1.2m wide pedestrian galvanised 'W' palisade security gate	SUM	2	£1,656.90	£1,656.90
3.6	2.4m high galvanised 'W' palisade security fencing (including posts and fixings)	m	5	£524.28	£524.28
3.7	Construction/Installation of new fencing arrangement	SUM	1	£9,340.75	£9,340.75
3.8	Provision of as constructed record i.e. photographs and as constructed drawings	SUM	1	£687.50	£687.50
3.9	Input into Health and Safety File	SUM	1	£784.50	£784.50
	<i>Do not insert any additional lines unless formally raised as a clarification</i>				
<b>The total of the Prices</b>				<b>£323,977.19</b>	

The method and rules used to compile the Price List are

Civil Engineering Standard Method of Measurement 4<sup>th</sup> edition (CESMM4) as per the Framework Price Workbook.

# Scope

## 1. Description of the works

The *Contractor* shall undertake fabrication and installation tasks in relation to eel passage improvements at Site A - Beer Wall (River Soway) Tilting Weir and at Site B - Brean Cross Sluice

The *Contractor* shall also undertake light touch design and installation tasks in relation to eel pass access improvements at Site C - Hackness Sluice

There is good access to all sites, and as all construction/installation work is on an engineered structure, no ecological constraints are anticipated. However, the *Contractor* shall include in their price a cost to undertake a pre-construction ecological check to confirm negative presence of protected species.

A summary of the *Clients* requirements at each location is provided below (Table 1). The full Scope is described in Site A, B & C **Site Specific Packs**.

Sites	Summary of proposed works
Site A- Beer Wall (River Soway) Tilting Weir	<i>Contractor</i> shall: <ul style="list-style-type: none"><li>Fabricate and install the <i>Client</i> approved detailed design for a pumped eel pass, excluding installation of control box and electrical connections</li><li>Reorientation of existing fencing to enable safe working access to the eel pass system</li><li>Provide a Operation and Maintenance Manual for the site once installed</li></ul>
Site B - Brean Cross Sluice	<i>Contractor</i> shall: <ul style="list-style-type: none"><li>Fabricate and install the <i>Client</i> approved detailed design for a pumped eel pass, excluding installation of control box and electrical connections</li><li>Provide a Operation and Maintenance Manual for the site once installed</li></ul>
Site C - Hackness Sluice	<i>Contractor</i> shall: <ul style="list-style-type: none"><li>Provide a light touch palisade security fencing and access gateway design to formalise the <i>Clients</i> provided Concept Sketch, so that it is suitable for construction.</li><li>Procure and install the access gate and fencing</li></ul>

NOTE - The *Client* will also undertake an early ecological check of all sites during the tender phase. The findings of the ecological check will be provided to the *Contractor* to ensure any identified ecological constraints are appropriately actioned in their environmental plan and included in the *Contractors* pre-construction ecological check and toolbox talk.

## 2. Drawings

List the drawings that apply to the contract.

See Site Specific Packs for details

Drawing Number	Revision	Title

## 3. Specifications

List the specifications which apply to the contract.

Title	Date or Revision	Tick if publicly available
Environment Agency The Eel Manual - Elver and eel passes: A guide to the design and implementation of passage solutions at weirs, tidal gates and sluices.	GEHO0211BTMV-E-E	yes
Environment Agency Fish Pass Manual	GEHO 0910 BTBP-E-E	yes
Safety, Health, Environment and Wellbeing (SHEW) Code of Practice	May 2018	Yes
Civil Engineering Specification for the Water Industry (CESWI)	7th Edn	No
OI 369_13 MEICA Standard Specification	Version 5	No
369_13_SD09 - Pumps	Version 2	No
OI 13_06 Implementation of automatic control at environment agency sites	Version 2	No
OI 369_13 SD11 - Electrical installations	Version 2	No

## 4. Constraints on how the Contractor Provides the Works

The Contractor shall not commence any work on any of the sites until the Client, or their representative, has accepted the site specific method statements and risk assessments related to this contract

The Contractor is to prepare, for the Client's acceptance, the Construction Phase Plan (CPP) and update the environmental plan prior to starting any construction work on any of the sites

No work can be undertaken until all permissions and consents have been obtained, including, but not limited to a FRAP, Habitat Regulations Assessment (HRA) consent and Site of Special Scientific Interest (SSSI) assent.

NOTE -

Where required, HRA consent and SSSI assent will be sought by the Client based on the Contractors method statement. Assuming HRA does not require an Appropriate Assessment and/or Natural England consultation, the HRA consent and SSSI assent will be provided within 2 weeks of Client receiving a satisfactory method statement.

Packaged works to be completed before the end of March 2022

Prior to any site works commencing, the Client will:

- Undertake an ecological site walkover of each site to establish any ecological constraints that may affect delivery of the works;
- Undertake any Habitat Regulations Assessment or SSSI assent requirement; and,
- Arrange landowner permissions to facilitate access to each site to undertake work, including areas to be used as site compound/storage. To enable the Client to undertake access arrangements, as part of

the *Contractors* return the *Contractor* shall provide their approach to access, welfare and storage for each site, via a simple annotated plan.

See Z Clause 13.1 for details of the flooding compensation event trigger level for each *site* when a major flood event occurs.

#### **Working times**

The *Contractor* will be permitted to work between 7.30am and 6.00pm on weekdays (Monday to Friday)

## **5. Requirements for the programme**

The *Contractor* shall submit a programme with the *Contractor's* Offer for acceptance. In the form of a Gantt chart, the *Contractor* shows on their overarching programme the following:

- (a) Contract start
- (b) Fabrication timescales
- (c) Period required for mobilisation/ planning & post contract award
- (d) Starting date for each site
- (e) Each of the activities listed within the Price List for each site and respective duration
- (f) Any key third party interfaces: lead in periods for materials and sub-*Contractors*; time required to obtain consents/waste permits; stated constraints; *Contractor's* risks.
- (g) The critical path
- (h) The proposed order that each site will be delivered and,
- (i) The completion date (individual sites and contract completion)

#### **NOTE**

- The *Contractors* programme is to be reviewed and updated where required upon contract award, then further updated monthly and provided to the *Client*.
- For programming purposes the *Contractor* should allow a minimum 10 days for any *Client* / Principal Designer review.

## **6. Services and other things provided by the *Client***

Describe what the *Client* will provide, such as services (including water and electricity) and “free issue” Plant and Materials and equipment.

Item	Date by which it will be provided
Services search results to inform CPP  NOTE an updated services check for each site will be provided 4 weeks prior to site mobilisation to inform the <i>Contractor</i> CPP  Note - the above services information does not remove the Principal <i>Contractor</i> or <i>Contractor's</i> requirement to carry out safe working practices in relation to overhead and underground services.	2 weeks prior to construction start
HRA consent and SSSI assent (where required)	Within 2 weeks of <i>Client</i> receiving satisfactory risk assessments and method statements.
Access to the site for construction	Prior to site mobilisation

# Site Information

See Site A, B & C Site Specific Pack Section 300 'Site Information'

## Proposed sub-*Contractors*

	Name and address of proposed subcontractor	Nature and extent of work
1.	Form of Contract:	
2.	Form of Contract:	
3.	Form of Contract:	
4.	Form of Contract:	