



National Highways Limited Pavement Delivery Framework

NEC 4 Framework Contract (June 2017)

Framework Information Appendix 09 – Form of Novation (Old Supplier to New Supplier)

CONTENTS AMENDMENT SHEET

Amend. No.	Revision No.	Amendments	Initials	Date
0	0	Tender issue	JW	15/03/2022

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NATIONAL HIGHWAYS LIMITED
as Client

[•]
as New Supplier

[•]
as Old Supplier

DEED OF NOVATION

relating to the Pavement Delivery Framework contract for the provision of
construction works in National Highways Lot **[•]**

DATED [●]

Parties

- 1) **NATIONAL HIGHWAYS LIMITED** (company no 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ (the “Client”),
- 2) [●] (company no [●]) whose registered office is at [●] (the “Old Supplier”)
- 3) [●] (company no [●]) whose registered office is at [●] (the “New Supplier”)

Background

- A) By the Contract, the Client has employed the Supplier to provide the Works.
- B) The Old Supplier has agreed (with the consent of the Client) to transfer all its rights and obligations under the Contract to the New Supplier and the Client has agreed to accept the liability of the New Supplier in place of the liability of the Old Supplier under the Contract upon and subject to the terms of this deed, which is supplemental to the Contract.

1. Definitions and Interpretation

- 1.1 Unless the contrary intention appears, the following definitions apply:

“**Contract**” means together

- a) the framework contract dated [●] between the Client (1) and the Old Supplier (2) (including any further agreement varying or supplementing the framework contract);
- b) any Package Order awarded by the Client to the Old Supplier pursuant to the framework contract; and
- c) any Work Orders awarded by the Client to the Old Supplier pursuant to the framework contract

under which the Old Supplier has agreed to provide the Works. For the avoidance of doubt, Work Orders awarded by Contracting Bodies are not subject to this deed.

“**Contracting Bodies**” means *Contracting Bodies* (as defined in the framework contract).

“Works” means the works to be provided by the Old Supplier pursuant to the Contract.

- 1.2 The clause and paragraph headings in this deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.3 Words in this deed denoting the singular include the plural meaning and vice versa.
- 1.4 References in this deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.5 Words in this deed importing one gender include both other genders and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.

2. Novation

- 2.1 The Old Supplier and the Client release and discharge each other from the further performance of their respective obligations under the Contract and the Client acknowledges and accepts the liability of the New Supplier in place of the liability of the Old Supplier under the Contract.
- 2.2 The New Supplier undertakes to be bound to the Client by the terms of the Contract in every way as if the New Supplier was and always had been a party to the Contract in place of the Old Supplier.
- 2.3 The Client acknowledges and warrants to the New Supplier that it has duly observed and performed and will continue duly to observe and perform all its obligations under the Contract.

3. New Supplier's Undertakings

- 3.1 Subject to Clause 4.1 below, the New Supplier undertakes to be bound to the Client by the terms of the Contract and to perform the obligations on the part of the Supplier under the Contract in every way as if the New Supplier was and always had been a party to the Contract in place of the Old Supplier.

4. Payment of Sums Due

- 4.1 The Client and the Old Supplier agree that the total amount to be paid by the Client to the Old Supplier for the Works provided under the Contract prior to the date of this deed is £[●]. The Old Supplier acknowledges that the Client has paid the sum of £[●] prior to the date of this deed. The balance of £[●]

shall be invoiced by the Old Supplier to the Client and paid by the Client in accordance with the Contract.

- 4.2 The New Supplier acknowledges that any payment made by the Client to the Old Supplier in respect of the Works (whether before or after the date of this deed) shall be treated as having been made to the New Supplier and that the Client's payment obligation under the Contract shall to that extent be treated as discharged.

5. Notices

- 5.1 Any notice or other communication required under this deed shall be given in writing and is to be delivered personally (which includes delivery by courier) or sent by pre-paid recorded or special delivery post to the party concerned at its address set out in this deed or to such other addresses as may be notified by such party for the purposes of this clause.
- 5.2 Any notice given pursuant to this clause will be deemed to have been served as follows:
- if delivered personally, at the time of delivery; and
 - if sent by recorded or special delivery post, 48 hours after being delivered into the custody of the postal authorities but excluding Saturdays, Sundays and public and bank holidays in England.
- 5.3 In proving service, it will be sufficient to prove that personal delivery was made or that the envelope containing the notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid recorded or special delivery letter.

6. Governing Law and Disputes

- 6.1 This deed and any non-contractual obligations arising out of or in connection with it shall be governed by English law.
- 6.2 The parties agree that the courts of England shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this deed, including (without limitation) in relation to any non-contractual obligations. The parties irrevocably submit to the jurisdiction of those courts.

Execution Page

This deed has been executed as a deed and delivered on the date stated at the beginning of this deed.

OPTION 1a [execution by National Highways under seal]

Executed as a deed by **NATIONAL HIGHWAYS LIMITED** by affixing its common seal in the presence of:

Director

Director/Secretary

OPTION 1b [execution by National Highways under seal]

Executed as a deed by **NATIONAL HIGHWAYS LIMITED** by affixing its common seal in the presence of:

Authorised Signatory

Authorised Signatory

OPTION 2a

Executed as a deed by **NATIONAL HIGHWAYS LIMITED** acting by:

Director

Director/Secretary

OPTION 2b

Executed as a deed by NATIONAL HIGHWAYS LIMITED acting by:	
	Authorised Signatory
	Authorised Signatory

Executed as a deed by [OLD SUPPLIER] in the presence of:	
	Authorised Signatory
	Authorised Signatory

Executed as a deed by [NEW SUPPLIER] in the presence of:	
	Authorised Signatory
	Authorised Signatory