

DATED

August

2020

HIGHWAYS ENGLAND COMPANY LIMITED

and

COSTAIN LIMITED

FORM OF AGREEMENT BY DEED

relating to the provision of construction works and
associated services in relation to the motorway and trunk
road network in Highways England Area 4

DATE: August 2020

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 *Client*”); and
- 2 **COSTAIN LIMITED** (company no **610201**) whose registered office is at Vanwall Business Park, Maidenhead, Berkshire, SL6 4UB (“the *Supplier*”).

RECITALS:

- A The *Client* wishes to appoint a supplier to undertake the provision of construction works and associated services in relation to the Affected Property during the *service period* and for that purpose has issued an invitation to tender (including the Framework Information and Scope) to, the *Supplier*.
- B In response to the *Client*'s invitation to tender, the *Supplier* has submitted a tender for the provision of construction works and associated services in relation to the Affected Property in accordance with the Framework Information and the Scope.
- C The *Client* has examined the *Supplier*'s tender and now wishes to appoint the *Supplier* to undertake the provision of construction works and associated services in relation to the Affected Property on the terms of this Agreement.

OPERATIVE PROVISIONS:**1 Definitions and interpretation**

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

1.2. The Conditions are

- the clauses of the NEC4 Framework Contract (June 2017) (including the Z clauses referred to in the Contract Data) and
- the core clauses of the NEC4 Term Service Contract (June 2017), the main and secondary Option clauses listed in the Contract Data and the additional conditions of contract set out in the document entitled “Z clauses (Term Service Contract)” for Work Orders.

2 Communications

2.1 The *Supplier* nominates Graham Sugrue to act as the *Supplier'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 *Supplier* shall notify the *Client* in advance of any change to the identity of the *Supplier's* representative named in this clause.

3 Termination

3.1 Termination of this Agreement shall not affect or limit the rights and remedies of either the *Client* or the *Supplier* in relation to any act, omission or default of the other party prior to the termination.

4 Contract Documents

4.1 The documents listed in Annex A form part of this Agreement.

4.2 The list of documents included in Annex A is intended to be extensive, but may not be exhaustive.

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

5 **Agreement**

5.1 The *Supplier* will undertake the provision of construction works and associated services in relation to the Affected Property in accordance with the provisions of this Agreement.

5.2 The *Client* will pay to the *Supplier* the amounts due under and in accordance with the provisions of this Agreement.

Delivered as a deed on the date of this document.

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

Authorised Signatory

Authorised Signatory

Executed as a deed by **COSTAIN LIMITED**)
in the presence of:)

Director

Director/Company Secretary

ANNEX A
Contract Documents

Contract Documents
Contractual Agreement
Area 4 Interim CWF Form of Novation Appendix 1a Issue 5 Rev 0
Area 4 Interim CWF Form of Novation Appendix 1b Issue 5 Rev 0
Area 4 Interim Parent Company Guarantee Appendix 2 Issue 5 Rev 1
Area 4 Interim CWF Contract Data Part 1 Issue 1.2
Costain_Area 4 CWF_Contract Data Part 2
Area 4 Interim CWF Additional Contract Data Part 1 Issue 5 Rev 0
Area 4 Interim CWF Additional Contract Data Part 2 Issue 5 Rev 0
Area 4 Interim CWF - Financial workbook - Schedule of Rates - FINAL
Costain Area 4 CWF Financial Workbook Fee Percentage tender issue
Area 4 Interim CWF Mobilisation Costed Resource Plan - FINAL
Area 4 Interim CWF - Supplementary Schedule of Rates – FINAL – v1.1
Area 4 Interim CWF Delivery Cost Resource Plan – FINAL (email 6 Aug 2020)
Area_4_Interim_CWF_TTM_SOR_(using Chevron rates) - FINAL
Area_4_Interim_CWF_TTM_SOR_(using H W Martin rates) - FINAL
Costain Area 4 CWF Framework Mobilisation Plan
Area 4 Interim CWF Framework Z Clauses Issue 1.1
Area 4 Interim CWF TSC Z Clauses Issue 1 Model 5
Area 4 Interim CWF Specification Issue 1 Rev 0

Area 4 Interim Method of Measurement Tender Issue 1
Area 4 Interim CWF Framework Information Issue 1.3
Supporting Information
Costain Area 4 CWF Highways England Anti-Fraud Code of Conduct
Costain Area 4 CWF Highways England Anti-Bribery Code of Conduct
Costain Area 4 CWF Highways England Fair Payment Charter
Costain Area 4 CWF Insurance Summary
Costain Area 4 CWF Insurance Statement (A Statement undertaking responsibility for insurance claims)
Costain Area 4 CWF PCG Confirmation (Willingness Statement)
Costain Area 4 CWF Freedom of Information (Request for non-disclosure under Freedom of Information Act 2000)
Costain Area 4 CWF SME Statement
Costain Area 4 CWF Assurance Policy (Proposed Information Assurance Solutions)
Quality Submission
Costain Area 4 CWF App B Quality Promises
Costain Area 4 CWF Responses to Quality Questions Q1-Q7
Costain Area 4 CWF Q1 Attachment 1 Organogram
Costain Area 4 CWF CV Q2 Attachment 2 CV's
TSC Scope and Annexes
Area 4 Interim CWF TSC Scope Issue 1.3 08072020
Area 4 Interim CWF Annex 02 Vision, Imperatives, Values & Key Objectives Issue 5 Rev 0
Area 4 Interim CWF Annex 03 Reference Documents Issue 5 Rev 8
Area 4 Interim CWF Annex 04 Insurance Requirements Issue 5 Rev 0

Area 4 Interim CWF Annex 06 Information Systems Issue 5 Rev 0
Area 4 Interim CWF Annex 08 Confidentiality, Security & Col Issue 5 rev 1
Area 4 Interim CWF Annex 10 Cost Capture Data Requirements Issue 5 Rev 0
Area 4 Interim CWF Annex 10 Cost Capture Template - Appendix A
Area 4 Interim CWF Annex 11 Community Issue 5 Rev 0
Area 4 Interim CWF Annex 12 Communications Issue 5 Rev 0
Area 4 Interim CWF Annex 13 General Health Safety for Construction Issue 5 Rev 0
Area 4 Interim CWF Annex 16 Quality Management Issue 5 Rev 0
Area 4 Interim CWF Annex 17 Performance Management Issue 5 Rev 0
Area 4 Interim CWF Annex 18 Continual Improvement and Innovation Issue 5 Rev 0
Area 4 Interim CWF Annex 19 Records Issue 5 Rev 0
Area 4 Interim CWF Annex 26 Customer Service Issue 5 Rev 0
Area 4 Interim CWF Annex 27 Environmental Management & Sustainability Issue 5 Rev 0
Area 4 Interim CWF Task Brief Issue 5 Rev 0
Area 4 CWF TSC TO 1 Mobilisation V1.0
Area 4 CWF WO 1 programme of works Nov20 to March 21 V1.0
Area 4 CWF TSC TO 2 Lump Sum duties V1.0
Tender Queries
Area 4 CWF Tender Query Log v8 FINAL
Collaborative Performance Framework (CPF)
FINAL CPF Methodology V.201804

FINAL CPF Performance Management Manual V.201804
FINAL CPF Scoring Guidance V201804 v5
FINAL Damage to Crown Property Data Standard for CPF V.201804
FINAL Highways Data Standard for CPF V.201804
FINAL Incident Data Standard for CPF V.201804
FINAL Metrics Handbook V.201804
FINAL_Oracle_Fusion_Data_Standard_for_CPF_V.201804
FINAL_Provider_Data_Standard_for_CPF_V.201804
FINAL_Quality_Management_Points_Data_Standard_for_CPF_V.201804
FINAL_Scheme_Data_Standard_for_CPF_V.201804
Category Management
ECC Sub Contract for Major Suppliers
ECC Works Info Sub V15.0
Major Lots 1-6 Engineering and Construction Subcontract (ECCS) Part one and Part Two
Pavement Category Management MoM v4
Pavements Financial Workbook Submission_Lots_1-6_v.5
Proforma Fee Schedule
Volume 1 - Contract Data Part 1 (Major)
Volume 1 - Contract Data Part 2 (Major)

Volume 1 - ECC Subcontract Z clauses v3
Volume 1 - Framework Z Clauses v4 - Major
Works Contract Award Letter Template
ECC Sub Contract for Minor Suppliers
Instruction information taken from NEC Short -Minor pricing
Minor Lots 7-12-Engineering and Construction Short Subcontract Part One and Two
Pavement Category Management MoM v4
Pavements Financial Workbook Submission_Lots_7-12_v.5
Proforma Fee Schedule
Volume 1 - Contract Data Part 1 (Minor)
Volume 1 - Contract Data Part 2 (Minor)
Volume 1 - EC Short Subcontract Z clauses v2
Volume 1 - Framework Z Clauses v4 - Minor
Works Information Short Sub - V11.0
Annexes
Annex_1_-_Area 4 Interim CWF _Annual_Work_Package_Allocation_Procedure V1.0 (050520)
Annex_1_-_Area 4 Interim CWF_Issue_of_Pavement_Works_Package_Procedure_-_Prices_Set_by_Supplier V1.0 (050520)
Area 4 Interim CWF Annual_Work_Package_Allocation_Process V3.0 (050520)

Area 4 Interim CWF Issue_of_Pavement_Works_Package_Process_-_Prices_Set_by_Supplier V2.0
(050520)

Volume_2_-_Framework_information_v29

ANNEX B - Quality Promises

Area 4 Interim CWF – Quality Promises

Quality Question	Quality Promise	Location of the promise in Quality Submission
1	Using a competency matrix, we will identify staff training needs and ensure all members of the core delivery team have complete Costain's 3rd Party accredited Behavioural Safety Programme. We will deliver on this promise within four months from the end of mobilisation.	Q1 – Resource the contract to support the delivery of our approach (Page 2 of 28)
2	In accordance with our Operational Excellence recommended best practice, we will undertake quality risk reviews during the scheme planning stage, these will be recorded and addressed prior to going to site. Success will be 95% of schemes have undertaken quality risk review.	Q2 - Managing risks and opportunities effectively (Page 7 of 28)
3	We will work with the Supplier Relationship Manager to identify and agree up to 20 staff from across the Community to put through our 3rd Party accredited Behavioural Safety Programme. Within six months from the end of mobilisation.	Q3 - Reducing H&S risks in delivery (Page 10 of 28)
4	All our front line employees and supply chain supervisors/leads will undertake a Customer Engagement briefing before starting work on site.	Q4 – Our customer experience approach – People (Page 13 of 28)
5	We will follow the principles of ISO44001 processes and activities and help establish a collaborative working group to support on the implementation of the collaboration standard across the Community. We will deliver on this promise within six months from the end of mobilisation.	Q5 - How we will work with and engage the Community and partners for the best outcomes for the Client and Customer (Page 18 of 28)
6	Working Day Rounds – We will make available our PDT Finance Lead to actively support Highway England's Project Managers in the working day reporting cycle.	Q6 - Our approach to commercial and financial control (Page 21 of 28)
7	We will run a collective workshop during Mobilisation to identify the needs and outcomes of the Interim CWF contract including helping Highways England to ascertain a set of rules to determine what data will go through CEMAR.	Q7 - Collaboration within the Area 4 Community (Page 27 of 28)