

## **Council of the Isles of Scilly**

# **THE FORM OF ENQUIRY**

## **FOR:**

<b>Project title</b>	<b>Flood and coastal defence works on the Islands of St Marys, St. Agnes, Bryher and St. Martins</b>
<b>TED / Find a Tender reference</b>	
<b>Project Reference Number</b>	<b>CAS04</b>

**For use with the NEC3  
Engineering and Construction  
Contract (ECC) 2013 Option A**



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## **Section 1: NEC Contract Amendments “Z Clauses”**

Attached separately, titled: “NEC3 Contract Amendments “Z Clauses””



## Section 2 CONTRACT DATA Part 1

### NEC3 CONTRACT DATA Part one - Data provided by the *Employer*

Reference	Subject	Main Contract Option	The Employer wishes to use Main Contract Option
CD1	The <i>conditions of contract</i> are the core clauses for Main Option:	<b>Tick to select options</b>	
		<b>A</b>	✓
		<b>B</b>	Not Used
		<b>C</b>	Not Used
		<b>D</b>	Not Used
		<b>E</b>	Not Used
		<b>F</b>	Not Used

Reference	Subject	<b>Default Particulars and Additional Risk Options</b>	
CD2	and dispute resolution Option	<b>Tick to select options</b>	
		<b>W1 (HGCRA does not apply)</b>	Does Not Apply
CD3	and secondary option:	<b>W2 (HGCRA applies)</b>	✓
		<b>Option X1</b>	Does Not Apply
		<b>Option X2</b>	✓
		<b>Option X3</b>	Does Not Apply
		<b>Option X4</b>	✓
		<b>Option X5</b>	Does Not Apply
		<b>Option X6</b>	Does Not Apply
		<b>Option X7</b>	✓
		<b>Option X12</b>	Does Not Apply
		<b>Option X13</b>	Does Not Apply
		<b>Option X14</b>	Does Not Apply
		<b>Option X15</b>	Does Not Apply
		<b>Option X16</b>	✓
		<b>Option X17</b>	Does Not Apply
		<b>Option X18</b>	✓
		<b>Option X20 (not used with X12)</b>	Does Not Apply
		<b>Y(UK)1</b>	Does Not Apply
		<b>Y(UK)2</b>	✓
		<b>Y(UK) 3</b>	Does Not Apply



Reference	Subject	Default Particulars and Additional Risk Options Tick to select options	
	The <i>works</i> are	Flood and coastal defence works on the Islands of St Mary's, St. Agnes, Bryher and St Martin's, Isles of Scilly.	
	The <i>Employer</i> is	Name: Council of the Isles of Scilly Address: Town Hall, St. Marys, Isles of Scilly, TR21 0LW	
	The <i>Project Manager</i> is	Council of the Isles of Scilly	
	The <i>Supervisor</i> is	TBC	
	The Works Information (Employer's Requirements) is in	Section 3 of the Form of Enquiry	
	The Site Information is in	Section 4 of the Form of Enquiry	
	The <i>boundaries of the site</i> are	Shown in individual drawings and maps associated with each site (Annex B, Schedules 1 and 2).	
	The <i>language of this contract</i> is	English	
	The <i>law of the contract</i> is the law of	England	
		Tick to select option	
CD4	The <i>period for reply</i> is	1 week	
		2 weeks	✓
		3 weeks	
		4 weeks	
		5 weeks	
	The <i>Adjudicator nominating body</i> is	Institute of Civil Engineers	✓
	The <i>tribunal</i> is	Court Proceedings	
	The following matters will be included in the Risk Register	Refer to Section 5 of the Form of Enquiry	
<b>3 Time</b>			



Reference	Subject	Default Particulars and Additional Risk Options Tick to select options	
	The <i>starting date</i> is	TBA with Contractor est. December 2021	
	The <i>access dates</i> are	Part of the Site	Date
		Porth Hellick	TBA - 15/11 -1/5 each year
		Porth Loo	TBA - Any time EXCEPT April and October each year
		Porthmellon	TBA - 1/10 -1/5 each year
		St. Agnes	TBA - 1/10 -1/5 each year
		Bryher	TBA - 1/10 -1/5 each year
		St Martins	TBA - 1/10 -1/5 each year
CD5	The <i>Contractor</i> submits revised programmes at intervals no longer than	Each calendar month	
<b>4 Testing and Defects</b>			
			Tick to select
CD6	The <i>defects date</i> is	24 months from Completion	✓
CD7	The defect correction period is	2 months or such other period of time as shall be notified by the Project Manager (which shall not be less than 2 months)	
	Except that the defect correction period for defects notified by the Client as "Emergency" is	Time Period	Tick to Select option
		1 hour	
		2 hours	
		3 hours	
		5 hours	
		7 hours	
		12 hours	
		24 hours	✓
	"Emergency" means e.g. a situation that presents a hazard that may directly affect the health and safety of anyone or cause severe disruption to anyone carrying out business.		
	Except that the defect correction period for defects notified by the Client as "Urgent" is:	24 hours	
		48 hours	
		72 hours	✓
		96 hours	
	"Urgent" means e.g. a situation which could deteriorate into an		



Reference	Subject	Default Particulars and Additional Risk Options Tick to select options	
	emergency if not addressed within the defined period or causes difficulties to someone carrying out his business.		
5 Payment			
CD8	The <i>currency of this contract</i> is the	Pound sterling	
	The <i>assessment interval</i> is	Monthly (calendar month)	
	The <i>interest rate</i> is	2% per annum above the base rate of the Bank of England	
6 Compensation events			
CD9	The place where weather is to be recorded is	Nearest weather station is: St. Mary's airport Location: 49° 54'52.3" N, 6 °17'44.96" W	
	The weather measurements to be recorded for each calendar month are	<ul style="list-style-type: none"><li>the cumulative rainfall (mm)</li><li>the number of days with rainfall more than 5mm - 3 Days and these measurements:</li><li>wind speed and direction</li></ul>	
	The <i>weather measurements</i> are supplied by	The Met Office	
		Insert Amount	
CD10	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) caused by activity in connection with this contract for any one event is	£10 million	
CD11	The minimum limit of indemnity	£10 million	



Reference	Subject	Default Particulars and Additional Risk Options Tick to select options
	for insurance in respect of 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 for any one event is:	
	The minimum level of required professional indemnity insurance for any one claim or series of claims arising out of one event is:	£5 million
<b>Optional statements</b>		
CD12	<b>If the <i>Employer</i> has decided the <i>completion date</i> for the whole of the works</b> The <i>completion date</i> for the whole of the <i>works</i> is...	31 December 2022





				Tick to select as appropriate
CD13	<b>If the <i>Employer</i> is willing to take over the works before the Completion Date</b>	The <i>Employer</i> is willing to take over the works before the Completion Date	Applies	
			Does not Apply	✓
CD14	<b>If no programme is identified in part two of the Contract Data</b> The <i>Contractor</i> is to submit a first programme for acceptance within:	1 week of the Contract Date		
		2 weeks of the Contract Date		
		3 weeks of the Contract Date		
		6 weeks of the Contract Date		✓
CD15	<b>If the Employer has identified work which is to meet a stated condition by a key date</b>  The <i>key dates and conditions</i> to be met are:	Condition to be met		Key date
		The contractor is to provide the Employer with complete and accurate copies of the H&S File and O&M Manual  The contractor is to provide the Employer with a draft copy of the H&S File and O&M Manual, including evidence of satisfactory and successful commissioning and testing.		Within 3 weeks following the completion date          On or by the completion date
				Tick to select as appropriate
CD17	<b>If Y(UK)2 (as amended) is used and the final date for payment is not 14 days after the date when payment is due</b> The period for payment is	7 days		
		14 days		
		21 days		
		28 days		
		30 days		✓
CD18	<b>If there are additional Employer's risks</b> These are additional <i>Employer's</i> risks	1. Design / detail of works for sites on Bryher, St. Agnes and St. Martin's, subject to contract conditions 2. Licencing for all works for which the employer has the responsibility to obtain.		



CD19	<p><b>If the <i>Employer</i> is to provide Plant and Materials</b></p> <p>The insurance against loss of or damage to the <i>works</i>, Plant and Materials is to include cover for Plant and Materials provided by the <i>Employer</i> for an amount of</p>	None		
CD20	<p><b>If the <i>Employer</i> is to provide any of the insurances stated in the Insurance Table (instead of the Contractor)</b></p> <p>The <i>Employer</i> provides these insurances from the Insurance Table</p>	Insurance type	Cover	
		The Employer will not provide insurances stated in the insurance table		
CD21	<p><b>If additional insurances are to be provided</b></p> <p>The <i>Employer</i> provides these additional insurances Eg. Insurance for existing premises.</p>	Insurance type	Cover	
		The Employer will not provide additional insurances		
CD22	The <i>Contractor</i> provides these additional insurances	Insurance type	Cover	
		None		
	<p><b>If the <i>Employer</i> requires any third parties (e.g. Funder) to be covered by any of the Contractor's policies of insurance</b> (clause 84.2)</p>	Insurance type	Party to be covered	Cover
		N/A		



	<b>If Option B or D is used</b> The <i>method of measurement</i> is amended as follows	Not used
CD23	<b>Not Used</b>	Not Used
CD24	<b>Not Used</b>	Not Used
	The <i>exchange rates</i> are those published in	Not applicable
CD26	<b>If Option X5 is used</b> <ul style="list-style-type: none"> <li>The completion date for each <i>section of the works</i> is</li> </ul>	As agreed following contract inception meeting. Within 6 weeks of contract start. Sections as defined and completion dates to be arranged at inception meeting. We would expect a minimum of 4 to maximum of 6 sections, each comprising multiple sites, across the Islands: <ol style="list-style-type: none"> <li>1. St Mary's a:Porthloo, b:Porth Hellick, c: Porthmellon</li> <li>2. St. Agnes</li> <li>3. Bryher</li> <li>4. St. Martin's</li> </ol>
CD27	<b>If Option X5 and X6 are used together</b> <ul style="list-style-type: none"> <li>The bonus for each <i>section of the works</i> is</li> </ul>	Not Used
	Remainder of the <i>works</i>	Not Used
CD28	<b>If Option X5 and X7 are used together</b> <ul style="list-style-type: none"> <li>Delay damages for each <i>section of the works</i> are</li> </ul>	On a sliding scale established from the program of works agreed within 6 weeks of contract start, to a maximum of £10,000.  Based on a minimum of 150% of the value of the incomplete works.
	Remainder of the <i>works</i>	Not Used
CD29	<b>If Option X6 is used (but not if Option X5 is also used)</b> <ul style="list-style-type: none"> <li>The bonus to the whole of the <i>works</i> is</li> </ul>	Not Used



CD30	<b>If Option X7 is used (but not if Option X5 is also used)</b> <ul style="list-style-type: none"> <li>Daily damages for Completion of the whole of the works are</li> </ul>	Not used	
	<b>If Option X12 is used</b> <ul style="list-style-type: none"> <li>The Client is</li> </ul>	Not Used	
	<ul style="list-style-type: none"> <li>The Client's objective is:</li> </ul>	Not Used	
	<ul style="list-style-type: none"> <li>The Partnering information is in:</li> </ul>	Not Used	
CD31	<b>If Option X13 is used</b>	<b>Description</b>	<b>Tick to select</b>
	<ul style="list-style-type: none"> <li>The form of the performance bond is</li> </ul>	Not Used	
	The amount of the performance bond is		
	<ul style="list-style-type: none"> <li>The Expiry of the bond</li> </ul>		
CD32	<b>If Option X14 is used</b> <ul style="list-style-type: none"> <li>The amount of the advanced payment is</li> </ul>	Not Used	
	<ul style="list-style-type: none"> <li>The Contractor repays the instalments in assessments starting not less than</li> </ul>	Not Used	
	<ul style="list-style-type: none"> <li>The instalments are (either an amount or a percentage of the payment otherwise due)</li> </ul>	Not Used	
	An advanced payment bond:		Tick to Select
		Is required	



		Is not required	✓
	The form of advanced payment bond is	Not applicable	
CD33	<b>If Option X16 is used</b>		
	• The retention free amount is	£0	
	• The retention percentage is	The retention percentage prior to Completion of the whole of the works is 3%	
		The retention percentage post Completion of the whole of the works is 1.5%	
	• Following issue of the Commit to Construct notice, a retention bond		Tick to Select
		Is required	
		Is not required	✓
CD34	<b>If Option X17 is used</b>	Not Used	
	• The amounts for low performance damages are		
CD35	<b>If Option X18 is used</b>	<b>Limit on liability</b>	
	• The Contractor's liability to the Employer for indirect or consequential loss is limited to:	£10m in any one contract year from the Contract Date	
	• For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to:	£10m in any one contract year from the Contract Date	
	• The Contractor's liability for Defects due to his design which are not listed on the Defects Certificate is limited to:	£5m in any one contract year from the Contract Date	
	• The Contractor's total liability to the Employer for all matters arising under or in connection with this contract other than excluded matters is limited to:	£10m in any one contract year from the Contract Date	
	• The end of liability date is years after the Completion of the whole of the works:	12 years	
CD36	<b>If Option X20 is used</b>	Not used.	
	• The KPI's attributable to this project and the associated incentives are		



CD37	<b>If Option Y(UK)1 is used and the Employer is to pay any charges made and is paid any interest paid by the project bank</b>	Not Used
CD38	<b>If Option Y(UK)3 is used</b> (Third Party Rights)	Person or organisation
		Not Used
CD39	<b>If Option Z is used</b> The additional conditions of contract are:	The default Z clauses which apply to this form of NEC3 contract at section 1 of this form of enquiry, attached separately.
CD40	<b>If Employer's Affordability Cap is selected</b>	The Budget is: £2.18 million  For the total of the Construction Cost.



## Section 3: Works Information (Employer's Requirements)

The works information for this contract is attached separately. The following documentation comprises the works information:

Title	Doc Ref.	Rev.	Date
<b>General</b>			
ITT Document Climate Adaptation Scilly Coastal Defence Works.docx		1	28/09/2021
Annex A Standard Selection Questionnaire.docx		1	15/09/2021
Data_for_Economic_Financial_standing.xlsx		1	15/09/2021
Annex B Specification Climate Adaptation Scilly - Coastal Defence Works.docx		1	30/09/2021
<b>Design documents</b>			
DR-CE-0501-S2-P2-Porth Hellick Timber Boardwalk Plan.pdf		2	28/09/2017
UA008878-ARC-XX-XX-DR-CE-0500-S2-P3-Porth Hellick Site Plan.pdf		3	09/04/2019
UA008878-ARC-XX-XX-DR-CE-0502-S2-P3-Porth Hellick Plan of Raised Dune.pdf		3	09/04/2019
UA008878-ARC-XX-XX-DR-CE-0520-S2-P3-Porth Hellick Ramp Section C & F.pdf		3	26/03/2019
UA008878-ARC-XX-XX-DR-CE-0521-S2-P3-Porth Hellick Section D.pdf		3	09/04/2019
UA008878-ARC-XX-XX-DR-CE-0522-S2-P1- Boardwalk Sections.pdf		1	04/08/2017
UA008878-ARC-XX-XX-DR-CE-0523-S2-P1-Porth Hellick Sections E and G.pdf		1	09/04/2019
UA008878-ARC-XX-XX-DR-CE-0524-S2-P1-Porth Hellick Sections H and J.pdf		1	09/04/2019
TRIAL PIT SUMMARY - Porth Mellon.pdf		1	20/02/2021
UA008878-ARC-XX-XX-DR-CE-0300-P3-PorthMellonSitePlan.pdf		3	29/03/2019
UA008878-ARC-XX-XX-DR-CE-0301-P1 Porth Mellon Trial pits.pdf		1	04/05/2017
UA008878-ARC-XX-XX-DR-CE-0302-P2-PorthMellonRevetmentPlan.pdf		2	29/03/2019
UA008878-ARC-XX-XX-DR-CE-0303-P3-Porth Mellon Services Plan.pdf		3	05/04/2019
UA008878-ARC-XX-XX-DR-CE-0320-P3-Porth Mellon Revetment Section A.pdf		3	29/03/2019
UA008878-ARC-XX-XX-DR-CE-0321-P3-Porth Mellon Revetment Section B.pdf		3	29/03/2019
UA008878-ARC-XX-XX-DR-CE-0322-P2-Beach Access.pdf		2	28/09/2017
UA008878-ARC-XX-XX-HS-CE-0362-P02-Designers Hazard Record.pdf		2	28/09/2017
UA008878-ARC-XX-XX-MS-CE-0363-P01-Design Statement.pdf		1	28/09/2017
PorthlooBBS231-P1.pdf		1	10/11/2019
UA008878-ARC-XX-XX-DR-CE-0200-P1-PorthlooSitePlan.pdf		1	01/11/2019
UA008878-ARC-XX-XX-DR-CE-0220-P4-PorthlooRevetmentPlan.pdf		4	03/11/2019



Title	Doc Ref.	Rev.	Date
UA008878-ARC-XX-XX-DR-CE-0221-P5-PorthlooSectionSheet1.pdf		5	03/11/2019
UA008878-ARC-XX-XX-DR-CE-0222-P5-PorthlooSectionsSheet2.pdf		5	03/11/2019
UA008878-ARC-XX-XX-DR-CE-0223-P4-PorthlooSectionsSheet3.pdf		4	10/04/2019
UA008878-ARC-XX-XX-DR-CE-0230-P1-PorthlooRetainingWallGA.pdf		1	10/11/2019
UA008878-ARC-XX-XX-DR-CE-0231-P1-PortLooRetainingWallRC.pdf		1	10/11/2019
AquaRockBag Brochure 2.0.pdf		1	26/07/2021
DKR6499-000-D101 [01]_Project Location Map.pdf		1	23/08/2021
DKR6499-000-D102 [01]_General Notes.pdf		1	23/08/2021
DKR6499-000-D103 [01]_LIDAR Survey Layout - St. Agnes.pdf		1	23/08/2021
DKR6499-100-D110 [01]_General Arrangement-St.Agnes-Periglis 48&49.pdf		1	23/08/2021
DKR6499-100-D111 [01]_General Arrangement-St.Agnes-Port Coose 50.pdf		1	23/08/2021
DKR6499-100-D112 [02]_General Arrangement-St.Agnes-Port Killier 51.pdf		2	30/09/2021
DKR6499-100-D310 [01]_St.Agnes-Periglis 4&49-Ridge Protection Typical Section.pdf		1	23/08/2021
DKR6499-100-D320 [01]_St.Agnes-Port Coose 50-Ridge Protection Typical Section.pdf		1	23/08/2021
DKR6499-100-D330 [01]_St.Agnes-Port Killier 51-Rock Toe Protection Typical Section.pdf		1	23/08/2021
DKR6499-RT002-R02-00.pdf		2	19/08/2021
environmental innocuousness 173601 UUB Geolon PP 60.pdf		1	26/07/2021
TenCate_Geolon_Robulon_PP_Datasheet_EN_503058_961406.pdf		1	26/07/2021
DKR6499-000-D104 [01]_LIDAR Survey Layout - Bryher.pdf		1	06/09/2021
DKR6499-200-D110 [01]_General Arrangement-Bryher 1-Great Poth-Par South.pdf		1	06/09/2021
DKR6499-200-D111 [01]_General Arrangement-Bryher 2&3B-Great Porth North of Great Carn.pdf		1	06/09/2021
DKR6499-200-D112 [01]_General Arrangement-Bryher 3-Stinking Porth.pdf		1	06/09/2021
DKR6499-200-D113 [01]_General Arrangement-Bryher 4-Great Popplestone.pdf		1	06/09/2021
DKR6499-200-D114 [01]_General Arrangement-Bryher 5-Kitchen Porth.pdf		1	06/09/2021
DKR6499-200-D115 [01]_General Arrangement-Bryher 8B-Quay.pdf		1	06/09/2021
DKR6499-200-D116 [01]_General Arrangement-Bryher 9-North Green Bay.pdf		1	06/09/2021
DKR6499-200-D310 [01]_Bryher 1-Great Porth-Par South-Typical Section.pdf		1	06/09/2021
DKR6499-200-D320 [01]_Bryher 2&3B-Great Porth North of Great Carn-Typical Section.pdf		1	06/09/2021
DKR6499-200-D330 [01]_Bryher 3-Stinking Porth-Typical Section.pdf		1	06/09/2021





Title	Doc Ref.	Rev.	Date
DKR6499-200-D340 [01]_Bryher 4-Great Popplestone-Typical Section.pdf		1	06/09/2021
DKR6499-200-D350 [01]_Bryher 5-Kitchen Porth-Typical Section.pdf		1	06/09/2021
DKR6499-200-D360 [01]_Bryher 8B-Quay-Typical Section.pdf		1	06/09/2021
DKR6499-RT002-R01_CRS.docx		1	30/07/2021
DKR6499-RT003-R01-00.pdf		1	19/08/2021
DKR6499_Bryher_Drawings-DRAFT 210730.pdf		1	30/07/2021
DKR6499-000-D105 [01]_LIDAR Survey Layout - St.Martin's.pdf		1	22/09/2021
DKR6499-300-D310 [01]_General Arrangement-St.Martin's-26&27.pdf		1	22/09/2021
DKR6499-RT004-R01-00.pdf		1	27/08/2021
<b>Specifications</b>			
Environment Agency MTR		1	01/10/2021
Possible rock sources.kml		1	13/09/2021
Rock Specifications		1	01/10/2021
UA008878-ARC-XX-XX-SP-CE-0823-P1-PorthHellickWorksSpecification.pdf		1	09/04/2019
Works Information 412_13_SD01-EA-MTR- IoS.pdf		1	05/04/2019
UA008878-ARC-XX-XX-SP-CE-0831-P1-PorthlooRockRevetmentSpecification.pdf		1	15/04/2019
UA008878-ARC-XX-XX-SP-CE-0832-P1-PorthMellonRockRevetmentSpec.pdf		1	05/04/2019



## Section 4: Site Information

The site information for this contract is attached separately. The following documentation comprises the site information:

Title	Doc Ref.	Rev.	Date
HS-CE-0562-P2-Porth Hellick Designers Hazard Record.pdf		2	28/09/2017
MS-CE-0561-P2-Porth Hellick Design Statement.pdf		2	28/09/2017
UA008878-ARC-XX-XX-SP-CE-0813-P4-PorthHellickWorksInformation_edited.docx		4	30/09/2021
UA008878-ARC-XX-XX-SP-CE-0823-P1-PorthHellickWorksSpecification.pdf		1	09/04/2019
UA008878-ARC-XX-XX-HS-CE-0261-P02-Porth Loo Designer's Hazard Record.pdf		2	04/10/2017
UA008878-ARC-XX-XX-MS-CE-0260-P04-Porth Loo Design Statement.pdf		4	10/11/2019
UA008878-ARC-XX-XX-SP-CE-0801-P1-SiteInformationPorthloo.pdf		1	12/04/2019
UA008878-ARC-XX-XX-SP-CE-0811-P3-PorthlooWorksInformation.pdf		3	01/10/2021
UA008878-ARC-XX-XX-SP-CE-0811-P3-PorthlooWorksInformation.docx		3	29/09/2021
UA008878-ARC-XX-XX-HS-CE-0362-P02-Designers Hazard Record.pdf		2	28/09/2017
UA008878-ARC-XX-XX-MS-CE-0363-P01-Design Statement.pdf		1	28/09/2017
UA008878-ARC-XX-XX-MS-CE-0370-P01-IoS Porth Mellon Indicative Method Statement.pdf		1	07/05/2019
UA008878-ARC-XX-XX-SP-CE-0802-P1-Porth Mellon Site Information.pdf		1	05/04/2019
UA008878-ARC-XX-XX-SP-CE-0812-P4-Porth Mellon Works Information.docx		4	30/09/2021
UA008878-ARC-XX-XX-SP-CE-0803-P1-Porth Hellick Site Information.pdf		1	09/04/2019
<b>PreConstruction Information Pack</b>			
IoS Sea Defences - CEMP.pdf		1	01/09/2021
IoSPorthlooIndicativeMethodStatement.pdf		1	13/04/2021
UA008878-ARC-XX-XX-MS-CE-0370-P01-IoS Porth Mellon Indicative Method Statement.pdf		1	07/05/2019
IoSPorthlooIndicativeMethodStatement.pdf		1	13/04/2021



## **Section 5: The Contract Risk Register**

The risk register for this contract is attached separately. Please note, the Risk Register entries from Contract Data parts one and two do not change the fundamental risk allocation in the contract and should be drafted in the manner of an Early Warning.



## Section 6: Collateral Warranties

If required, the Employer may request the Contractor or the Contractors' subcontractors shall enter into deed(s) of warranty in favour of:

- any third party identified in this Section 2 of this Form of Enquiry issued to the *Contractor*, including any Tenant, Purchaser or Funder; or
- any further third party as so directed by the *Employer*; or
- the *Employer* (for subcontractors); or
- the Employer in the event the *Employer* assigns or novates the contractor (for the *Contractor*)

If selected below the *Contractor* shall within 21 days of the execution of the Deed of Agreement, or within 21 days of the date of any relevant contract executed with any subcontractor selected below, execute and deliver to the *Employer* a deed(s) of warranty in accordance with any such request.

The collateral warranty templates are found in Appendices 3 to 6

Beneficiary	Tick to Select	Parties required to provide warranties	Tick to Select	Class, type or name of party required to provide warranties
<b>Employer</b>	✓	Sub-Contractors	✓	Specialist subcontractors: including but not limited to mechanical services, electrical services, lifts steel frame and connections, piles. Any sub-contractor with design responsibility under this contract.
		Consultants		

## Appendix 1 – Template Deed of Agreement



**European Union**  
European Regional  
Development Fund



**HM Government**

**DATED** \_\_\_\_\_ **20\*\***

### **NEC3 ENGINEERING AND CONSTRUCTION CONTRACT (APRIL 2013)**

- (1) THE COUNCIL OF THE ISLES OF SCILLY
- (2) **[INSERT NAME OF CONTRACTOR]**

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**MEMORANDUM OF AGREEMENT**  
**FOR**  
**[Insert Project Name]**

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**THIS MEMORANDUM OF AGREEMENT** is dated \_\_\_\_\_

**Between:**

- (1) **The Council of the Isles of Scilly, Town Hall, St. Mary's, Isles of Scilly, TR21 0LW** (the "**Employer**" which expression shall include its successors in title and permitted assigns); and
- (2) [exact name of tendering company] incorporated and registered in England and Wales with company number [xxxxxxxxxx] whose registered office is at [xxxxxxxxxxxxx] (the "**Contractor**").

## Background

- (A) The Employer is a public authority and wishes to procure works and services in connection with a Project pursuant to the terms of the Invitation to Tender issued on TED / Find a Tender / Contracts Finder ) dated [xxxxxx] including all tender documents.
- (B) The Employer and Contractor agree to be bound by the terms and conditions in the Contract Documents in relation to the Project.

## Agreed terms

### 1. Definitions and Interpretation

- 1.1. *Unless the context otherwise requires, the definitions and rules of interpretation in this clause apply in this Agreement.*

<b>Conditions of Contract</b>	the NEC3 Engineering and Construction Contract 2013 [Option A] form of contract to be used for the Project as notified to the Contractor in the Invitation to Tender, as amended and supplemented by the Contract Documents.
<b>Contract Documents</b>	the documents listed at <b>Schedule 1</b> to this Form of Agreement.
<b>Invitation to Tender (ITT)</b>	the completed invitation to tender issued on TED / Find a Tender / Contracts Finder dated [xxxxxx] issued by the Employer to the Contractor.
<b>Project</b>	the project detailed in the ITT and Form of Enquiry.
<b>Project Manager</b>	the project manager detailed in the Form of Enquiry.
<b>Works</b>	the works and services stated in the Enquiry as further detailed in the Contract Documents.

- 1.2. The defined terms and expressions used in this Memorandum of Agreement are defined in clause 1.1.
- 1.3. In this Memorandum of Agreement, unless the context otherwise requires:

- 1.3.1. the headings are included for convenience only and shall not affect the interpretation of this Memorandum of Agreement;
- 1.3.2. the singular includes the plural and vice versa;
- 1.3.3. a gender includes any other gender;
- 1.3.4. a reference to a "person" includes any individual, firm, partnership (including limited liability partnership), company and any other body corporate;
- 1.3.5. references to clauses, schedules and annexes are to the clauses, schedules and annexes of this memorandum of agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.3.6. a reference to a statute, statutory instrument or other subordinate legislation ("legislation") is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification; and
- 1.3.7. a reference to specific standards, codes of practice, guideline, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes thereto.
- 1.4. In the event of a conflict or discrepancy between the Contract Documents, the Works Information shall prevail.
- 1.5. The schedules form part of this Memorandum of Agreement and shall have effect as if set out in full in the body of this Memorandum of Agreement and any reference **to this Memorandum of Agreement includes the schedules.**

## **2. Incorporation of Terms**

- 2.1. The terms of the Contract Documents are incorporated into this Memorandum of Agreement as if set out herein.

## **3. Contractor's Responsibilities**

- 3.1. Without prejudice to the generality of clause 2.1, the Contractor will carry out the Works, and carry out all other duties and obligations, in accordance with the terms of the Contract Documents.

## **4. Employer's responsibilities**

- 4.1. Without prejudice to the generality of clause 2.1, the Employer will pay the Contractor for the Works, and carry out all other duties and obligations, in accordance with the terms of the Contract Documents.

## **5. Project Manager**

- 5.1 Where stated in the Form of Enquiry, the Employer has appointed a Project Manager to act as its agent and, save to the extent that the Employer may otherwise specify by notice to the Contractor, the Project Manager shall:

- 5.1.1. have full authority to issue certificates;

- 5.1.2. receive and issue communications; and

- 5.1.3. give an instruction to the Contractor which changes the Works Information for or on behalf of the Employer.

The Employer may replace the Project Manager after he has notified the name of the replacement.

## **6. Law and Jurisdiction**

- 6.1. This Memorandum of Agreement shall be considered as a contract made in England

and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

- 6.2. This Memorandum of Agreement is binding on the Employer and its successors and assignees and the Contractor and the Contractor's successors and permitted assignees.

## **7. Entire Agreement**

- 7.1. This Memorandum of Agreement constitutes the entire understanding between the parties relating to the subject matter of this Memorandum of Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

**IN WITNESS WHEREOF** the Parties have executed this Memorandum of Agreement as a deed the day and year first above mentioned

**EXECUTED as a DEED by  
THE COUNCIL OF THE ISLES OF SCILLY**

Whose Common Seal was hereunto  
Affixed in the presence of

Authorised Signatory\_\_\_\_\_

Print Name\_\_\_\_\_

## **AND AS A DEED BY THE CONTRACTOR**

..... (the *Contractor*)

Whose Common Seal was hereunto  
Affixed in the presence of

Authorised Signatory.....

Print Name.....

**OR**

by ..... (name of Director)

..... (signature of Director)

and ..... (name of Director or Company Secretary)

..... (signature of Director or Company Secretary)



## SCHEDULE 1 CONTRACT DOCUMENTS

1. The Form of Enquiry issued on TED/ Find a Tender **[Insert Reference and Date]**; and including all sections, appendices and all documents and terms referenced therein; and,
2. The Underlying NEC3 EEC Contract printed Conditions of Contract; including all amendments and z clauses; and,
3. The Contractors Tender Return Documents returned to [procurement@scilly.gov.uk](mailto:procurement@scilly.gov.uk) **[Insert Reference and Date]**; and consisting of the following;
  - A. Annex A: Standard Selection Questionnaire including the spreadsheet – Data\_for\_Economic\_Financial\_standing.xlsx **(to complete, sign and return with tender)**
  - B. Annex B: Specification, including Schedules to Annex B **(provided as further information for the tender)**
  - C. Annex C: Certificate of Bona Fide Tender **(to complete, sign and return with tender)**
  - D. Annex D: Expression of Interest Proforma **(to complete, sign and return as soon as possible)**
  - E. Annex E: Pricing Schedules **(to complete, sign and return with tender)**
- a) Contractors SSQ
  - b) Contractors Commercial Response
  - c) Contractors Technical Responses
  - d) Contract Data Part 2 including associated schedules;
    - i. Key People
    - ii. Risk Register
    - iii. Programme
    - iv. Pricing Document
4. [The questions and answers to the tender queries as expressly set out below:] [insert queries log if relevant otherwise delete this clause]



**European Union**

European Regional  
Development Fund



**HM Government**



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