# nec<sup>3</sup> Engineering and Construction

# **Short Contract**

A contract between DEFRA Estates

and Interserve (Facilities Management) Itd

for MSC Phase 1 - Regional Labs

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Notes about this contract are printed in boxes like this one. They are not part of the contract.

The Employer is

Name THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS.

Address Noble House

17 Smith Square, Westminster, London, SW1P 3JR

The works are MSC Phase 1 – Regional Labs

Contact for all matters:

The site is Weybridge, KT15 3NB

The starting date is 14 October 2020

The completion date is 31 December 2020

The period for reply is ASAP up to 3 days

The defects date is

The defect correction period is 52 weeks

The delay damages are
Nil

Nil weeks.
The assessment day is the Niil

Nil per day.

The retention is 31 of each month.

%.

weeks after Completion

Yes

Does the United Kingdom Housing Grants, Construction and

0

Regeneration Act (1996) apply?

The Adjudicator is

Name The Royal Institution of Chartered Surveyors

The interest rate on late payment is 0.5% per complete week of delay.

The conditions of contract are the NEC3 Engineering and Construction Short Contract April 2013 and the following additional conditions:

#### Option X7: Delay damages

Delay damages for Completion of the whole of the works are Nil.

#### Option X15: Limitation of the Contractor's liability for his design to reasonable skill and care

**Applies** 

#### Option X16: Retention

The retention free amount is 0%. The retention percentage is 0%

#### Option X18: Limitation of liability

X18.1 The Contractor's liability to the Employer for indirect or consequential loss is limited to Nil

X18.2 For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property, loss of damage to the Works, Plan and Materials and Equipment or liability for bodily injury or death for a person (not an employee of the Contractor) is limited to £1,000,000

X18.3 The Contractor's liability for Defects due to his/her design which are not listed on the Defects Certificate is limited to £1,000,000

X18.4 The Contractor's {Subcontractors} total employer liability, other than excluded matters detailed in Schedule 16 - Insurance, is limited to £10,000,000 in respect of each claim.

X18.5 The end of liability date is 6 years after the Completion of the whole of the works.

#### Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

The period for payment is 30 days from the date of valuation.

#### Option Z Option Z: Additional conditions of the Contract

The additional conditions of contract are described below. Each Option Z provision will apply as set out below.

#### Option Z1 Option Z1: Amending the Interpretation Provisions

#### Option Z1.1 Delete existing clause 12.1 and replace with:

"In this contract, except where the context shows otherwise

- words in the singular also mean in the plural and the other way round,
- words in the masculine also mean in the feminine and neuter and the other way round,
- references to a document include any revision made to it in accordance with this contract,

- references to a statute or statutory instrument include any amendment or reenactment of it from time to time and any subordinate legislation or code of practice made under it and
- references to a standard include any current relevant standard that replaces it."

#### Option Z2

#### **Option Z2: Confidentiality**

#### Option Z2.1

For the purpose of this contract, **Personal Data** is information collected by the Contractor on behalf of the *Employer* in relation to this contract, which relates to living individuals who can be identified:

- from that information
- from that information combined with other details in (or likely to come into) the possession of the *Employer*.

#### Option Z2.2

The *Contractor* keeps (and ensures that its employees and Subcontractors keep) confidential and does not disclose to any person, including, without limitation, Others:

- the terms of this contract and
- any confidential or proprietary information (including Personal Data) provided to or acquired by the *Contractor* in the course of Providing the Works

except that the Contractor may disclose information

- to its legal or other professional advisers,
- to its employees and Subcontractors as needed to enable the Contractor to Provide the Works.
- where required to do so by law or by any professional or regulatory
  obligation or by order of any court or government agency, provided that
  (unless the Contractor is prohibited by law from doing so) prior to disclosure
  the Contractor consults the Project Manager and takes full account of the
  Employer's views about whether (and if so to what extent) the information
  should be disclosed,
- which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
- which is in the public domain at the time of disclosure other than due to the fault of the Contractor or with the consent of the Project Manager.

Option Z2.3

The Contractor does not (and ensures that its employees and Subcontractors do

not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works.  Option Z3: Security  Without limiting this clasue Z3, the Contractor fully complies with all security requirements stated in the Works Information.  Site admittance  The Contractor submits to the Project Manager details of people who are to be employed by it and its Subcontractors in connection with the works. The details include a list of names and addresses, the capacities in which they are employed, and other information required by the Project Manager.
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include a list of names and addresses, the capacities in which they are employed,
and other information required by the Project Manager.
Option Z3.2 The <i>Project Manager</i> may instruct the <i>Contractor</i> to take measures to prevent
unauthorised persons being admitted on to the Site. The instruction is a
compensation event if the measures are additional to those required by the Works
Information.
Passes
Option Z3.3 Employees of the <i>Contractor</i> and its Subcontractors are to carry an <i>Employer's</i> pass
whilst they are on the parts of the Site stated in the Contract Data.
Option Z3.4 The Contractor submits to the Project Manager for acceptance a list of the names of
the people for whom passes are required.
Photographs
Option Z3.5 The <i>Contractor</i> does not take photographs of the Site or the works or any part of
them unless he has obtained the acceptance of the <i>Project Manager</i> .
The Confuse(surfales the unconfused to unconfused the Confused state) unconfused
Option Z3.6 The <i>Contractor</i> takes the measures needed to prevent its Subcontractors' people
taking, publishing or otherwise circulating such photographs.
Option Z4 Option Z4: Data Protection
Option Z4.1 The <b>Data Protection Acts</b> are the Data Protection Act 2018- GDPR and any other
laws or regulations relating to privacy or personal data.

#### Option Z4.2

For the purposes of this contract and the Data Protection Acts

- the Employer is the Data Controller and
- the Contractor is the Data Processor.

#### Option Z4.4

The *Contractor* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing its obligations under this contract.

#### Option Z4.5

The Contractor has in place and maintains until the defects date

- appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
- adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process Personal Data.

#### Option Z4.6

The Contractor immediately notifies the Project Manager if it receives

- a request from any person whose Personal Data it holds to access his Personal Data or
- a complaint or request relating to the *Employer's* obligations under the Data Protection Acts.

#### Option Z4.7

The *Contractor* assists and co-operates with the *Project Manager* in relation to any complaint or request received, including

- providing full details of the complaint or request,
- complying with the request within the time limits set out in the Data
   Protection Acts and in accordance with the instructions of the *Project Manager* and
- promptly providing the Project Manager with any Personal Data and other information requested by him.

#### Option Z4.8

The *Contractor* allows the *Employer* to conduct periodic audits of the *Contractor*'s compliance with the Data Protection Acts. The *Contractor* complies with the instructions of the *Project Manager* to enable such audits to be carried out.

	The Contractor complies with the requirements of the Employer in relation to the
Option Z4.9	storage, dispatch and disposal of the Personal Data in any form or medium.
Option Z4.10	The Contractor immediately notifies the Project Manager on becoming aware of any breach of this clause or of the Data Protection Acts by the Contractor or any Subcontractor.
Option Z4.11	The <i>Contractor</i> does not process the Personal Data outside the European Economic Area without the agreement of the <i>Project Manager</i> . Where the <i>Project Manager</i> agrees, the <i>Contractor</i> complies with the instructions of the <i>Project Manager</i> and provides an adequate level of protection to any Personal Data in accordance with the eighth data protection principle set out in Schedule 1 to the Data Protection Act 1998.
Option Z5	Option Z5: Disclosure of Information
Option Z5.1	A <b>Disclosure Request</b> is a request for information relating to this contract received by the <i>Employer</i> pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.
Option Z5.2	The Contractor acknowledges that the Employer may receive Disclosure Requests and that the Employer may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the Employer consults with the Contractor before doing so in accordance with the relevant Code of Practice. The Contractor uses its best endeavours to respond to any such consultation promptly and within any deadline set by the Project Manager and acknowledges that it is for the Employer to determine whether or not such information should be disclosed.
Option Z5.3	When requested to do so by the <i>Project Manager</i> , the <i>Contractor</i> promptly provides information in its possession relating to this contract and assists and co-operates with the <i>Project Manager</i> to enable the <i>Employer</i> to respond to a Disclosure Request within the time limit set out in the relevant legislation.

The Contractor promptly passes any Disclosure Request which it receives to the

Project Manager. The Contractor does not respond directly to a Disclosure Request

Option Z5.4

	unless instructed to do so by the Project Manager.
Option Z6	Option Z6: Copyright
Option Z6.1	<b>Material</b> means all materials prepared by or on behalf of the <i>Contractor</i> for the <i>works</i> and all updates, additions and revisions to them and any designs or inventions incorporated in them.
Option Z6.2	<b>Permitted Uses</b> means the design, construction, completion, reconstruction, modification, extension, refurbishment, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, building information, modelling and repair of the <i>works</i> .
Option Z6.3	The <i>Contractor</i> grants to the <i>Employer</i> , with immediate effect, an irrevocable, non-exclusive, royalty-free licence to copy and make full use of the Material for any purpose, including without limitation any of the Permitted Uses.
Option Z6.4	The <i>Employer's</i> licence carries the right to grant sub-licences and is transferable to third parties without the consent of the <i>Contractor</i> and survives termination (for any reason) of the <i>Contractor's</i> employment under this contract.
Option Z6.5	The <i>Contractor</i> is not liable for use of the Material for any purpose other than that for which it was prepared or provided.
Option Z7	Option Z7: Discrimination
Option Z7.1	The <i>Contractor</i> does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Acts 1995 and 2005 or the Equality Act 2010 (the " <b>Discrimination Acts</b> ").
Option Z7.2	Where possible in Providing the Works, the <i>Contractor</i> co-operates with and assists the <i>Employer</i> to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.
Option Z7.3	Where an employee or Subcontractor employed by the Contractor is required to

carry out any activity alongside the *Employer's* employees in any premises, the *Contractor* ensures that each such employee or Subcontractor complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.

#### Option Z7.4

The *Contractor* notifies the *Project Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Acts in connection with this contract and

- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
- attends (and permits a representative from the Employer to attend) any associated meetings,
- promptly allows access to any relevant documents and information and
- co-operates fully and promptly with the investigatory body, court or tribunal.

#### Option Z7.5

The *Contractor* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Contractor*.

#### Option Z7.6

The *Contractor* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above.

#### Option Z8

#### **Option Z8: Quality Management and Audit**

#### Option Z8.1

The *Contractor* operates a quality management system for Providing the Works which

- complies with the relevant parts of ISO 9001:2008 and ISO 9001:2008/Cor 1:2009,
- incorporates an environmental management system consistent with ISO 14001:2004,
- includes processes for delivering continual improvement following the guidance in ISO 9004:2009,
- has third party certification from a UKAS approved accreditation body (or its equivalent) or is operating in preparation for accreditation within 12 months of the Contract Date

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•	complies	with	good	industry	practice	and
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 otherwise fully complies, and is consistent with the requirements set out in the Works Information.

#### Option Z8.2

The *Contractor* provides to the *Project Manager*, within one week of the Contract Date, a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Works Information and are sufficiently detailed to demonstrate how the *Contractor* will Provide the Works in accordance with this contract.

#### Option Z8.3

The *Contractor* keeps a controlled copy of the quality plan available for inspection by the *Project Manager* at all times.

#### Option Z8.4

The Contractor complies with an instruction from the Project Manager to

- change the quality plan so that it complies with the requirements of this contract or
- correct a failure of the *Contractor* to comply with the quality plan.

#### Option Z8.5

The *Project Manager* and other persons authorised by him may carry out periodic audits of the *Contractor's* quality management system as specified in the Works Information. The *Contractor* allows access to the Working Areas and other premises used by the *Contractor* to Provide the Works and provides all facilities and assistance necessary to enable such audits to be carried out.

#### Option Z9

#### Option Z9: Compliance with Legislation

#### Option Z9.1

The Contractor Provides the works:

- in a proper and workmanlike manner, and
- in compliance with
  - all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the *works* or performance of any obligations under this contract, and
  - any regulation, bye-law, permission or approval of any local authority or statutory undertaker having jurisdiction in relation to

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the works or with whose systems the works are, or are to be, connected. Option Z9.2 The project that comprises or includes the works is not notifiable for the purposes of the Construction (Design and Management) Regulations 2015 (the "CDM Regulations"). The Contractor is the principal contractor under the CDM Regulations in respect of the works and performs all the functions and obligations required to be performed by the principal contractor under the CDM Regulations. **Option Z10: Fair Payment** Option Z10 The Contractor assesses the amount due to a Subcontractor without taking into Option Z10.1 account the amount certified by the Project Manager. The Contractor includes in the contract with each Subcontractor Option Z10.2 a period for payment of the amount due to the Subcontractor not greater than 19 days after the due date in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract, a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the due date in this contract and a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the Contractor. The due date in this contract is the date on which the Project Manager certifies Option Z10.3 payment. The Contractor notifies non-compliance with the timescales for payment through the Option Z10.4 Efficiency and Reform Group Supplier Feedback Service. The Contractor includes this provision in each subcontract, and requires Subcontractors to include the same provision in each subsubcontract. **Option Z11: Assignment** Option Z11 Option Z11.1 The Contractor does not assign its interest in or any rights arising under this contract

without the consent of the Employer.

Option Z11.2

The *Employer* may assign, charge or transfer its interest in this contract or any rights arising under it at any time without the consent of the *Contractor*. The *Employer* notifies the *Contractor* of any such assignment, charge or transfer.

Option Z11.3

The *Contractor* does not (and ensures that its employees and Subcontractors do not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works.

Option Z12

#### **Option Z12: Contractor's Design Submission Procedure**

Option Z12.1

Insert a new definition in clause 11.2:

"Contractor's Design Documents are drawings, design details and specifications of work, Plant and Materials prepared by the Contractor for the works".

Option Z12.2

Delete clauses 21.2 and 21.3 and replace with the following:

"21.2 The *Contractor* submits the *Contractor's* Documents to the *Supervisor* for acceptance at the times and in the manner and format stated in the Works Information.

21.3 The *Supervisor* returns each *Contractor's* Document to the Contractor marked either 'A' (accepted), 'B' (accepted with comments) or 'C' (rejected). If the *Supervisor* marks a *Contractor's* Document 'B' or 'C', he will state his reasons. A reason for not accepting a *Contractor's* Document is that it does not comply with:

- the Works Information,
- any previous Contractor's Document which:
  - the Supervisor has returned marked 'A', or
  - the *Supervisor* has returned marked 'B' and the *Contractor* has amended to incorporate the *Supervisor's* comments,
- the applicable law or
- any other provision of this contract.

21.4 If the *Supervisor* does not return a *Contractor's* Document within the *period for reply*, it is treated as having been returned marked 'A'.

21.5 Where a Contractor's Document is returned marked 'A', the Contractor

proceeds with the relevant work in accordance with the *Contractor's* Design Document.

21.6 Where a *Contractor's* Document is returned marked 'B', the *Contractor* 

- amends the Contractor's Document to incorporate the Supervisor's comments,
- submits the Contractor's Document as so amended to the Supervisor and
- proceeds with the relevant work in accordance the *Contractor's* Document as so amended.

21.7 Where a Contractor's Design Document is returned marked 'C', the Contractor

- amends the Contractor's Document to incorporate the Supervisor's comments,
- re-submits it to the Supervisor for acceptance and
- does not proceed with the relevant work until the Supervisor has returned it marked 'A' or 'B' and, where it is marked 'B', it has complied with clause 21.6

21.8 If the *Contractor* disagrees with the comment of the *Supervisor* on a *Contractor's* Document marked 'B' or 'C', he notifies the *Supervisor* within one week of receipt stating his reasons and that in his opinion compliance with the comment will give rise to a change in the Works Information. The *Supervisor* replies within one week of receipt of the *Contractor's* notice either confirming or withdrawing his comment. A confirmation or withdrawal by the *Supervisor* is not an acceptance of the *Contractor's* opinion.

21.9 If the *Contractor* does not notify the *Supervisor* within one week that he disagrees with a comment of the *Supervisor*, compliance with the comment does not give rise to a change in the Works Information."

#### Option Z14

#### **Option Z14: New Clause 60.1 (20)**

60.1 (20) Provisional Sums referered to in the Activity Schedule will be dealt with as a Compensation Event.

# The Contractor's Offer

The Contractor is

Name Interserve (Facilities Management) Itd

Address Capital Tower, Waterloo Road, London, SE1 8RT

The percentage for overheads and profit added to the Defined Cost for people is 8.70% (as per the ECC fees referenced in Schedule 31B of the Defra/Interserve Contract).

The percentage for overheads and profit added to other Defined Cost is 9.53%

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

#### The offered total of the Prices is £109,660.27

Major Project Works	Cost	Margin	Professional Fees	Total Price
Running Total	£93,944.30	£8,951.98	£6,763.99	£109,660.27
Purchase Order Value This sheet sets out the value of the Purchase Order to be provided in re be in accordance with the NEC3 Applicable Terms for the Project, and i			ents due to the Sei	vice Provider shall
Total Cost (excluding Professional Fees)		[	£93,944	
Gross Margin (%)	8.70%	Margin	9.53%	Mark-Up
Gross Margin (€)		[	£8,952	
Professional Service Fees (including applicable margin)		[	£6,764	
Grand Total (Excluding VAT)			£109,660	
Grand Total (including VAT)		[	£131,592	

Execution of this Contract is carried out in accordance with the 1999 EU Directive 99/93(Communication Framework for Electronic Signatures) and the UK Electronic Communications Act 2000. This Contract is formed on the date on which both the Authority and the Contractor have communicated acceptance of its terms on the Authority's e-tendering system ('Bravo').

# The Employer's Acceptance

Execution of this Contract is carried out in accordance with the 1999 EU Directive 99/93(Communication Framework for Electronic Signatures) and the UK Electronic Communications Act 2000. This Contract is formed on the date on which both the Authority and the Contractor have communicated acceptance of its terms on the Authority's e-tendering system ('Bravo').

# **Price List**

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

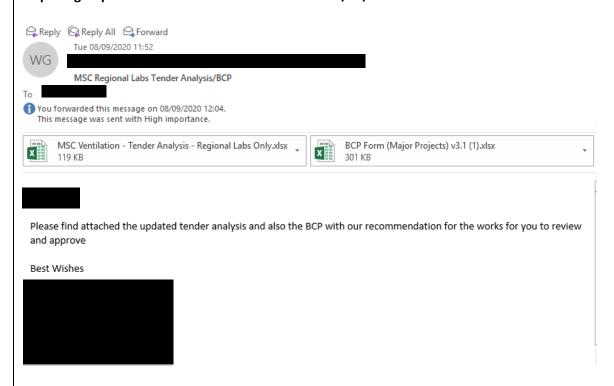
If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only; the Unit, Quantity and Rate columns being left blank.

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.

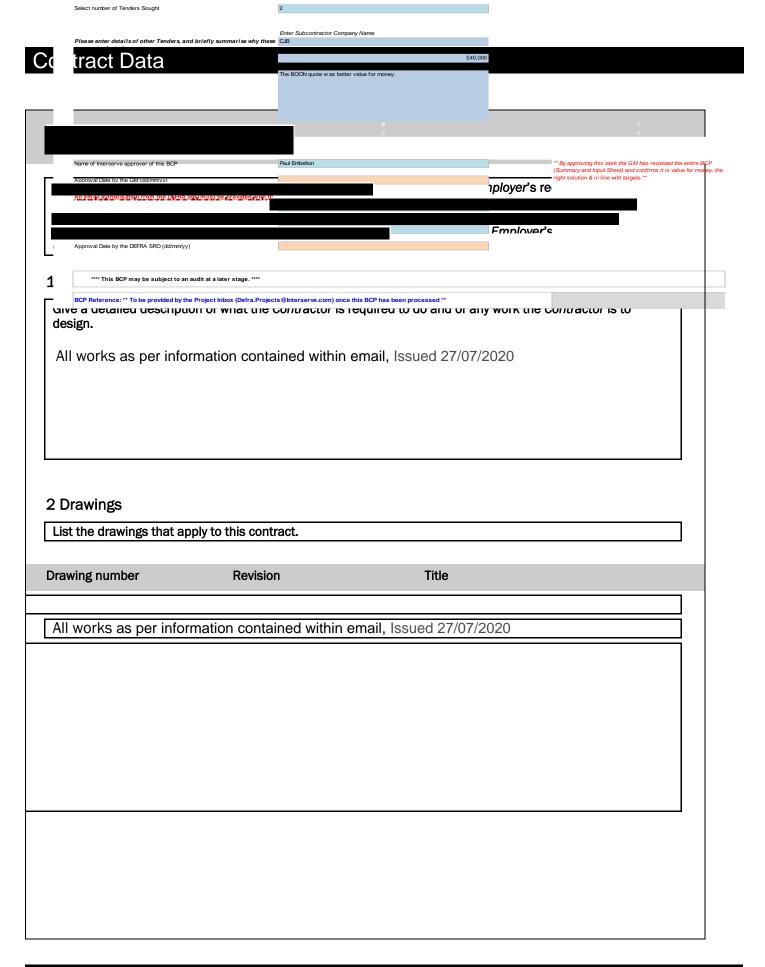
Cost plan as per priced activity schedule contained within email Issued 27/07/2020.



All pricing as per submitted BCP B884704 – Issued 08/09/2020.







#### 3 Specifications

List the specifications which apply to this contract.

All works as per information contained within email, Issued 27/07/2020

# **Works Information**

Title Date or revision Tick if publicly available

4 Constraints on how the Contractor Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Employer*.

As per IFM / Defra Framework agreement site rules.

# **Works Information**

5 Requirements for the programme

Completion date for delivery to site must be on or before 31/12/2020. Schedule that plans accordingly to be provided by IFM.

6 Services and other things provided by the *Employer* 

As per IFM site arrangements with DEFRA

# Site Information

Give information about the site such as the ground conditions and any other information which is likely to affect the Contractor's work such as limitations on access and the position of adjacent structures.

As per IFM site arrangements with DEFRA