

## **Section 4: Terms and Conditions of Professional Services Short Contract**

### **TERMS OF THIS AGREEMENT**

1. The Authority appoints the Consultant as a Supplier of services in accordance with the terms set out in the NEC3 Professional Services Short Contract (April 2013) together with the Additions and Amendments to Conditions of this Agreement and the Additional Conditions of this Agreement – Option Z.

2. This Agreement comprises the following:

Section 4.2.1 Parties & Recitals

Section 4.2.2 Terms and Conditions of NEC3 Professional Services Short Contract Agreement - Contract Data and the Consultants Offer

Section 4.2.4 Additional Conditions

## Section 4.2.1: Parties & Recitals

# Short Contract

A contract between **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** of Nobel House, 17 Smith Square, London, SW1P 3JR, acting through the Department for Environment Food and Rural Affairs (DEFRA) and its executive agencies

and MERRICK & COMPANY UK Ltd, 100 New Bridge Street, London, EC4V 6JA UK

for **MSC Phase 2 – Bio-Containment Services**

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

# Contract Data

The *Client* is

Name Department for Environment, Food, and Rural Affairs (DEFRA)

Address Nobel House, 17 Smith Square, London SW1P 3JR

Telephone 0208 225 8755

E-mail address

The *services* are **MSC Phase 2 – Bio-Containment Services**

The *starting date* is 14 August 2020

The *completion date* is 31 March 2021

The *delay damages* for late Completion are Zero per day

The *law of the contract* is England and Wales

The *period for reply* is Two (2) weeks.

The *defects date* is N/A weeks after Completion.

The *assessment day* is the In accordance with the Payment Schedule.

Work is to be carried out on a time charge basis Yes

**Delete if work is not to be carried out on a time charge basis.**

If the period for payment is not four weeks

The period for payment is 30 days.

The interest rate on late payment is 3% % per complete week of delay.

**Insert a rate only if a rate less than 0.5% per week of delay has been agreed.**

## Section 4.2.2: Terms and Conditions of NEC3 Professional Services Short Contract Agreement - Contract Data and the Consultants Offer

### Contract Data

The *Consultant* provides the following insurance cover

Insurance against	Minimum amount of cover	Period following Completion or earlier termination
Failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the services	£2 million in respect of each claim, without limit to the number of claims	6 years
Death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	£10 million in respect of each claim, without limit to the number of claims.	12 months
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	Whichever is the greater of .£5 million .or the amount required by law.in respect of each claim, without limit to the number of claims	For the period required by law

The *Client* provides the following insurance cover

Only enter details here if *Client* is to provide insurance.

# Contract Data

The <i>Consultant's</i> total liability to the <i>Client</i> for matters for which insurance is provided is limited to	The minimum amount of cover required in the Contract Data
The <i>Consultant's</i> total liability to the <i>Client</i> for other matters is limited to	100% of the Total of the Prices as detailed in the Consultants Offer
The <i>tribunal</i> is	The Courts of England and Wales
If the <i>tribunal</i> is arbitration, the arbitration procedure is	as per the Framework Agreement
The place where the arbitration is to be held is	As per the Framework Agreement
The person who will choose the arbitrator if the Parties cannot agree is	As per the Framework Agreement

**Only include these statements if the *tribunal* is arbitration.**

The *conditions of contract* are the NEC3 Professional Services Short Contract (April 2013) and the following additional conditions.

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

As per the framework agreement

# The Consultant's Offer

The Consultant is

Name Merrick & Company UK Limited

Address 100 New Bridge Street, London, EC4V 6JA

Telephone 01-303-353-3825

E-mail address

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

The name, job, qualifications and experience of Consultant's key people are in

The staff rates are	person or job	unit of measurement	rate
	Partner or Director	Hour	£153.00
	Subject Matter Expert	hour	£121.00

The offered total of the Prices is £120,013.00

Enter the total of the Prices from the Price List.  
If all work is to be carried out on a time charge basis, enter Not Applicable'.

Signed on behalf of the Consultant Merrick UK Ltd

Name:

Position:

Signature:

Date ..... 17 August 2020...

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# The Client's Acceptance

The Client accepts the Consultant's Offer to Provide the Services

Signed on behalf of the Client:

Name: .....

Position: .....

Signature: ..... Date .....

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## Price List

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

For each row:

- If the *Consultant* 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.
- If the *Consultant* is to be paid an amount for the item of work and 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.
- If the work is to be paid on a time charge basis, only expenses should be included.

Costs incurred by the *Consultant* other than the listed expenses are included in the Rates and Prices and the *staff rates*. If expenses are paid at cost, then 'at cost' should be entered into the Rate column.

Delete or strike through unused rows.

The *Consultants* pricing schedule is attached to this Contract as Schedule 1. All prices for Scope items have been calculated on an hourly basis, with rates for these hours and disciplines detailed above within the *Consultants* offer, and shall therefore be used for the purposes of valuation of payment applications, and for any variations as required under this contract.

The total of the Prices

£120,013.00

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### Section 4.2.3: Services Information

## Scope

The Scope should be a complete and precise statement of the *Client's* requirements. If it is incomplete or imprecise, there is a risk that the *Consultant* will interpret it differently from the *Client's* intention. Information provided by the *Consultant* should be listed in the Scope only if the *Client* is satisfied that it is required, is part of a complete statement of the *Client's* requirements and is consistent with other parts of the Scope.

1 Purpose of the *services*

**Provide a brief summary of why the *services* are being commissioned and what they will be used for.**

The provision of services to support the specification development, procurement, installation, testing, and commissioning of 30no new Micro-Biological Containment Units.

## **2 Description of the *services***

**Give a complete and precise description of what the *Consultant* is required to do.**

**If items of work have to be provided by a stated date, include a table describing the work and stating the date when it is to be provided.**

Carryout surveys of 30 units including MSCs, Fume cupboard and Downdraught tables over 7 locations.

16 URS based on writing 1 URS per building, per type of equipment e.g. B17 has 5 units - three MSCs and two fume cupboards. Therefore, two URS will be written for B17, whilst B4 has 5 MSCs to be replaced so only one URS to be written, including Contractor review or URS'.

Factory Acceptance Test (FAT) attendance for MSCs, Fume Cupboard, Downdraught.

Develop and Review FAT Documentation and write FAT field report for each MSC.

Review ventilation design and submit for Client review.

Develop and Review Commissioning Documentation.

Attend Site Acceptance Test (SAT) for all 30no units.

All final documentation and deliverables in order to complete handover and Contract completion.

## **3 Existing information**

**List existing information which is relevant to the *services*. This can include documents which the *Consultant* is to further develop.**

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# **Scope**

## **4 Specifications and standards**

**List the specifications and standards that apply to this contract.**

As per the Consultants proposal, these shall be developed, and submitted back to the *Client* for review and acceptance.

## **5 Constraints on how the *Consultant* is to Provide the Services**

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

**Set out any requirements for a quality management system.**

**Include a dispute resolution procedure if required.**

The Consultant shall comply with all local procedures and processes with regards to access and security at the Site, and in all locations where the *services* are to be undertaken, including restricted areas, and any areas requiring specific training, familiarization, and briefings in order to safely access.



# Scope

## 6 Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

## 7 Information and other things provided by the *Client*

Describe what information and other things the *Client* is to provide and by when. Information is that which is not currently available, but will become available during the contract. Other things could include access to a person, place (such as office space or a site) or the *Client's* information technology systems.

## Section 4.2.4: Additional Conditions

### **Z1 The Public Contract Regulations 2015**

- 1.1 The Client may terminate the Consultant's obligation to Provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Client terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Consultant at the Contract Date, the procedures and amounts due on termination are the same as for a default by the Consultant.

If the Client otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Client no longer requires the services.

- 1.2 The Consultant notifies the Client of the name, contact details and legal representatives of each subconsultant before appointing the subconsultant. The Consultant does not appoint a subconsultant if there are compulsory grounds for excluding the subconsultant under regulation 57 of the Public Contracts Regulations 2015.

- 1.3 The Client makes payment to the Consultant under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the Client to make earlier payment to the Consultant.

- 1.4 The Consultant includes in any subcontract awarded by him provisions requiring that
- payment due to the subconsultant under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Consultant to make earlier payment to the subconsultant or supplier,
  - invoices for payment submitted by the subconsultant or supplier are considered and verified by the Consultant in a timely fashion,
  - undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
  - any contract awarded by the subconsultant or supplier for work included in this contract includes provisions to the

### **Z2 Definitions**

- 2.1 Others are people or organisations who are not the Client, the Adjudicator, the Consultant or any employee, sub-consultant or supplier of the Consultant.

2.2 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.

2.3 In the event of any discrepancy, ambiguity or conflict between the Amendments and any other contract document or condition, the terms of the Amendments prevail.

## **Z3 The Law**

3.1 References to "this contract" mean the contract between the Client and the Consultant including the documents listed as forming the contract in the Form of Agreement and the Framework Agreement.

3.2 References in this contract to "applicable law" are deemed to include Statutory Requirements and include:

- that law as from time to time amended, re-enacted or substituted and
- any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.

The Consultant complies with the applicable law. Laws are regarded as applicable to the Consultant where they impose duties, obligations or restrictions on the Client, and the Consultant performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the Consultant.

3.3 Failure by the Client to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the Consultant from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.

3.4 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

3.5 No approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the Client, nor any enquiry or inspection which the Client makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the Consultant's obligation to fulfil its duties and obligations under this contract unless it is in writing from the Client, refers to this contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified.

<b>Z4 Communication</b>	4.1	The Client and the Consultant comply with the communications requirements in the Services Information.
	4.2	A notification which this contract requires is communicated separately from other communications.
<b>Z5 The Employers Authority and Delegation</b>	5.1	The Employers Framework Manager is for relevant purposes the “specified person” as defined in section 110A(6) of the Act.
<b>Z6 Early Warning</b>	6.1	<p>Delete Clause 14.1 and insert:</p> <p>“The Consultant and the Client give an early warning by notifying the other as soon as either becomes aware of any matter which could</p> <ul style="list-style-type: none"> <li>• increase the total of the Prices,</li> <li>• delay Completion,</li> <li>• impair the usefulness of the <i>services</i> to the <i>Client</i>,</li> <li>• adversely affect the work or services of Others, or</li> <li>• adversely affect the Client (including by increasing the monies payable by the Client to Others engaged on the Science Estate).</li> </ul> <p>In the notification the Consultant and the Client state whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting.</p> <p>The Consultant may give an early warning by notifying the Client of any other matter which could increase his total cost. The Client enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.”</p>
<b>Z7 Ambiguities and Inconsistencies</b>	7.1	The Client or the Consultant notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The Client gives an instruction resolving the ambiguity or inconsistency.
<b>Z8 Illegal and Impossible Requirements</b>	8.1	The Consultant notifies the Client as soon as he considers that the Services Information requires him to do anything which is illegal or impossible. If the Client agrees, he gives an instruction to change the Services Information appropriately.
<b>Z9 Providing the Services</b>	9.1	These conditions of contract and the warranties and undertakings in them are deemed to apply to all services performed by the Consultant both before and after the <i>starting date</i> .

**Z10 Working with the Client and Others**

- 10.1 The Client co-operates with Others in obtaining and providing information which they need in connection with the services. He co-operates with Others and shares the working areas with them as stated in the Services Information.

The Client and the Consultant provide services and other things as stated in the Service Information. Any cost incurred by the Client as a result of the Consultant not providing the services and other things which he is to provide is assessed by the Client and paid by the Consultant.

**Z11 Other responsibilities**

- 11.1 The Consultant obtains approval of his design from Others where necessary. The Consultant's responsibility includes obtaining:

In relation to Licences which it is the Client's responsibility to obtain, the Consultant (without taking the risk that such Licences are not obtained, save to the extent that this is caused by the Consultant's failure to provide support required by this contract and/or the Services Information)

- provides such support as the Services Information states the Consultant is to provide to the Client in applying for and obtaining such Licences and
- provides such other support as the Client reasonably requires, not entailing excessive cost to the Consultant (or if entailing such cost, provided the same is reimbursed by the Client).

The Consultant ensures that the works comply with all Licences and laws.

**Z12 CDM Obligations**

- 12.1 For the purposes of the CDM Regulations

The Consultant performs all the functions and duties of a Designer as defined in the CDM Regulations, to the extent that the CDM Regulations apply to the Consultant's duties under this contract.

**Z13 Limitation of the Contractors liability to reasonable skill and care**

- 13.1 Delete Clause 21.2 and insert:

"The Consultant warrants to the Client that in Providing the Services it exercises in the provision of the *services* all the reasonable skill and care as is to be expected of a properly qualified and competent consultant experienced in carrying out services such as its duties under this contract in relation to services of a similar scope, size, nature, timescale and complexity and on a similar site or at a similar location to the Client's site."

The Consultant warrants and undertakes to the Client that it uses the reasonable skill and care to see that the Scope when complete complies with any relevant performance specification or requirement including those referred to in the Consultant's design and complies with all Statutory Requirements including any conditions attached to any planning permission."

**Z14 Limitation of Liability**

**14.1** The Consultants total liability to the Clients for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.

The excluded matters are amounts payable by the Consultant as stated in this contract for

- loss of or damage to the Client's property,
- delay damages as stated in the Contract Data,
- any liability arising for death or bodily injury,
- any liability arising for losses caused by fraudulent acts or acts of a criminal nature.

**Z15 Access to and use of the site**

**15.1** Subject to the provisions of the Service Information regarding access, the Client allows access to and use of each part of the *site* to the Consultant which is necessary for the services included in this contract.

The Client does not guarantee uninterrupted or exclusive access to or use of the *site* or any working area and access is limited in accordance with this contract.

**Z16 Acceleration**

**16.1** The Client may instruct the Consultant to submit a quotation for an acceleration to achieve Completion before the Completion Date. A quotation for acceleration comprises proposed changes to the Prices or forecast of the total Defined Cost and a revised programme showing the earlier Completion Date. The Consultant submits details of his assessment with each quotation.

The Consultant submits a quotation or gives his reasons for not doing so within the period for reply.

When the Client accepts a quotation for acceleration, he changes the Prices and the Completion Date accordingly and accepts the revised programme. If the Client does not accept a quotation for acceleration, or does not accept the Consultant's reasons for not submitting a quotation, the Client may issue an instruction to the Consultant to accelerate and the Consultant proceeds to accelerate in accordance with that instruction and the Client makes his own assessment of the compensation event.

**Z17 Payment**

**17.1** If any parent company guarantee required by this contract is not procured by the Consultant and delivered to the Client within four weeks of the *starting date*, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the Consultant until such documents have been delivered.

17.2 In addition to any other rights of the Client whether at law or equity under this contract, whenever

- under this contract or any other contract between the Client and the Consultant any sum of money is recoverable from or payable by the Consultant or
- any Losses are reasonably and properly owed to, or incurred by, the Client under or arising out of this contract or any other contract between the Client and the Consultant

the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the Consultant under this contract.

17.3 Not later than five days after receipt of the payment certificate the Contractor delivers to the Employer a VAT invoice in the amount of the certificate with a copy of the certificate attached. The Contractor issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.

17.4 If the amount to be paid to the Consultant is less than the amount to be paid by or retained from the Consultant, the difference is recoverable from the Consultant as a debt due on demand.

**Z18 Parent  
Company Guarantee**

18.1 If a parent company owns the Consultant, the Consultant gives to the Client a guarantee by the parent company of the Consultant's performance in the form set out in the Service Information. If the guarantee was not given by the *starting date*, it is given to the Client within four weeks of the *starting date*.

**Z19 Delay Damages**

19.1 The Consultant pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the date of Completion certified by the Client.

If the Completion Date is changed to a later date after delay damages have been paid, the Client repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.

## **Schedule 1: Supplier Price Workbook**

Attached as noted within the 'Price List' above.