



Engineering and Construction Short Contract

An NEC document
June 2017
(With amendments January 2019)

Short Contract

A contract between

Natural England

**of Foss House, Kings Pool, 1-2 Peasholme Green,
YORK, YO1 7PX**

and

for

**Natural England, Cothill National Nature Reserve,
Cothill, OX13 6JW**

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The *Client's* Contract Data

The *Client* is

Name **Stephanie Wilson (Reserve Manager)**

Address for communications **Natural England, 4th Floor, Foss House Kings Pool, 1-2 Peasholme Green, York, YO1 7PX**

Address for electronic communications **Stephanieann.wilson@naturalengland.org.uk**

The *works* are

- Installation of a 120m raised boardwalk
- 3.6m passing bay roughly halfway along
- No handrail
- Toe rail
- Minor vegetation and tree branch clearance required, up to a height of 3m from ground level, where required to gain access to the site
- Site visit by contractor is mandatory part of the tender and failure to visit site will result in the contractor been removed from the process

The *site* is

Cothill Fen National Nature Reserve sits within the larger Cothill Site of Special Scientific Interest and Cothill Special Area of Conservation. The site is managed by Natural England and despite being one of the smallest NNR's, it is an incredibly valuable and unique nature reserve. The NNR sits within a larger complex of calcareous fens and flushes in Oxfordshire. Cothill Fen National Nature Reserve is accessed via String Lane – access is through a wooden field gate off a small car owned by the neighboring school, found here ([what3words /// The simplest way to talk about location](#)) (The school allows members of the public to park in their car park to access the nature reserves, and Natural England access through the field gate)

The *starting date* is **Provisional 11.09.2023**

The *completion date* is **Provisional 30.09.2023**

The *delay damages* are **Nil** per day

The *period for reply* is **3** Weeks

The *defects date* is **52** weeks after Completion

The *defect correction period* is Weeks

The *assessment day* is the of each month

The *retention* is %

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does apply

The *Adjudicator* is

Name

Address for communications

Address for electronic
communications

Contract Data

The *Client's* Contract Data

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

For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property is limited to

£5,000,000

The *Client* provides this insurance

None.

The *conditions of contract* are the NEC4 Engineering and Construction Short Contract June 2017 (with amendments January 2019) and the following amended and additional conditions

Option Z Z1 - Z16 are amended conditions of contract
 Z17 - Z21 are additional conditions of contract

Amended conditions of contract

Z1 Clause 11 Identified and defined terms – additions

11.2(17) **CDM Regulations** means the Construction (Design and Management) Regulations 2015 (SI 2015/51).

11.2(18) **Confidential Information** shall mean any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the Data Protection Act 2018)

11.2(19) **Deleterious Materials** are any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of use or permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the *Contractor's* trade and/or the construction industry:

- to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person
- to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the works or any part thereof and/or to other structures, finishes, plant and/or machinery
- to reduce or possibly reduce the normal life expectancy of works of a type comparable to the works
- to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the works
- not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices and/or
- [to be supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) or the Construction Products Directive (89/109/EC)]

11.2(20) **Documents** means all designs, drawings, specifications, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Contractor* in relation to this Contract.

11.2(21) **Intellectual Property Rights** means any and all patents, trade marks, service marks, copyright, moral rights, design rights and all or any other intellectual or industrial property rights whether or not registered and whether

subsisting in the United Kingdom or any other part of the world.

11.2(22) **The Aggregated Total of the Prices** is sum of

- the total of the Prices

11.2(23) **The Aggregated Price for Service Provided to Date** is the sum of

- the Price for Service Provided to Date

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Z2 **Clause 13 – Communications (additions)**

Insert new clause 13.3 – 13.6:

13.3 All communications between the *Client* and the *Contractor* required by or authorised under this Contract must comply with NEC4 ECSC clause 13 but is deemed to be duly given or made:

13.3.1 two working days after being sent by prepaid special delivery post; or

13.3.2 when delivered by hand if a signature acknowledging its receipt has been obtained.

13.4 In each case the notice must:-

13.4.1 refer to this Contract, and

13.4.2 be marked for the attention of the appropriate officer, person or department as notified to the other party in writing.

13.5 Each Party notifies the other in writing within five working days of any change in its address for service.

13.6 Any notice served on a non-working day or outside of normal working hours is deemed to be served on the following working day.

Z3 **Clause 20 Providing the Works**

Insert new clauses:

20.3 Subject always to the Contract Standard referred to in clause 20.1, the *Contractor* warrants to the *Client* that to the extent it either is obliged to specify or approve materials, products or goods for use in the Project or does so specify or approve, it shall not specify or approve anything that is Deleterious.

20.4 Notwithstanding the requirements of NEC4 ECSC clause 20.1, the *Contractor's* obligation is to use the reasonable skill, care and diligence to be expected of a properly qualified and competent member of the *Contractor's* profession experienced in carrying out similar services, duties and obligations for services of a similar nature, scope, character, and complexity as the services, herein referred to as the "Contract Standard".

Z4 **Clause 27 Other responsibilities**

Insert new clauses:

27.5 The *Contractor* discloses to the *Client* any actual or potential conflict of interest arising from the *Contractor's* provision of the services as soon as practicable after becoming aware of such actual or potential conflict.

27.6 The *Contractor* immediately notifies the *Client* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Contractor* (including without limitation its reputation and standing) and/or the *Client* of which it is aware or anticipates may justify the *Client* taking action to protect its interests.

27.7 Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level the *Client* has the right to terminate this Contract whereupon the provisions of NEC4 ECSC clause 90 apply to the termination.

27.8 The *Contractor* complies with all applicable environmental laws and regulations in force from time to time in relation to the services and promptly provides evidence of compliance when reasonably requested by the *Client*.

27.9 The *Contractor* satisfies all reasonable requests by the *Client* for information regarding the environmental impact of the services."

Z5 **Clause 28 Assignment**

Delete and insert:

28.1 The *Contractor* does not assign transfer or charge any benefit arising under or out of this contract without the prior written consent of the *Client* (at its absolute discretion).

28.2 The *Client* may without the *Contractor's* consent assign transfer and/or charge the benefit of all or any of the *Contractor's* obligations under this contract and/or any benefit arising under or out of this contract:

- as security to any funder (and such rights may be re-assigned on redemption)
- by absolute assignment to any [government department] ; and
- by absolute assignment on two other occasions.

Z6 **Clause 61 Notifying Compensation Events**

61.3 In line 5 delete "eight" and insert "four". In line 6 after "event has happened" insert "or of the date when the *Contractor* ought to have become aware of the event."

61.4 Delete the third bullet point (line 5) and insert: "arises by reason of any act, error, omission, negligence, breach or default of the *Contractor* or *Sub-Contractors* or any of their employees or agents,".

Z7

Clause 70 – Objects and materials within the site

Insert New Clauses

70.3 Copyright

The *Client* may at any reasonable time examine schedules, calculations, surveys, reports, specifications, drawings and/or any other documents and information which are in the possession of the *Contractor* and which concern this Contract, but no such examination relieves the *Contractor* of any responsibility for the services to be provided under this Contract.

70.4 The *Contractor* grants an irrevocable, perpetual, royalty-free, non-exclusive licence or procures the grant of such a licence to the *Client* to use the Intellectual Property Rights and to reproduce the Documents for any purpose relating to the works to which the services relate including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of those works. The *Contractor* shall not be liable for the consequences of any use by the *Client* of the Documents or the Intellectual Property Rights for any purpose other than that for which they were originally prepared by or on behalf of the *Contractor*. Such licence enables the *Client* to use the Intellectual Property Rights for any extension of the works to which the services relate but shall not include a licence to reproduce the Intellectual Property Rights in the documents in any extension of the works to which the services relate.

70.6 The *Contractor* warrants that the use of the Documents for the purposes of this Contract will not infringe the rights of any third party.

70.7 The *Contractor* supplies copies of the Documents to the *Client* and to the *Client's* other Contractors for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this Contract or related works.

70.8 After the termination or conclusion of the *Contractor's* employment hereunder, the *Contractor* supplies the *Client* with copies and/or computer discs of such of the Documents as the *Client* may from time to time request and the *Client* pays the *Contractor's* reasonable costs for producing such copies or discs.

Z8

Clause 71 – Confidentiality

71.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each party shall do each of the following:

71.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

71.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

71.2 Clause 71.1 shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:

71.2.1 such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000, Code of Practice on Access to Government Information or the Environment Information Regulations 2004 pursuant to clause 28 (Freedom of Information);

71.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

71.2.3 such information was obtained from a third party without obligation of confidentiality;

71.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; and

71.2.5 it is independently developed without access to the other party's Confidential Information.

71.3 The *Contractor* may only disclose the *Client's* Confidential Information to the *Contractor* personnel who are directly involved in the provision of the services and who need to know the information, and shall make sure that such *Contractor* personnel are aware of and shall comply with these obligations as to confidentiality.

71.4 The *Contractor* shall not, and shall procure that the *Contractor* personnel do not, use any of the *Client's* Confidential Information received other than for the purposes of this Contract.

71.5 At the written request of the *Client* and if reasonable in the circumstances to make that request, the *Contractor* shall procure that those members of the *Contractor's* key people identified in the Contract Data Part Two involved in the provision of the services sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

71.6 Nothing in this Contract shall prevent the *Client* from disclosing the *Contractor's* Confidential Information in any one or more of the following circumstances:

71.6.1 to any Crown body or any other contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the *Client*. All crown bodies or such contracting authority receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such contracting authority on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or other contracting authority;

71.6.2 to any other person engaged by the *Client* on the basis that the information is confidential and is not to be disclosed to a third party;

71.6.3 for the purpose of the examination and certification of the *Client's* accounts; and/or

71.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources."

Z9

Clause 83 – Insurance Cover

Insert new clauses;

83.4 All insurances required to be effected or maintained by the insuring party under NEC4 ECSC clause 83 are placed with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

83.5 If, without the approval of the *Client*, the *Contractor* fails to effect and maintain any insurance that it is required to effect and maintain under NEC4 ECSC clause 83 or obtains a different policy of insurance or fails to provide a copy of certificates when required to do so, the *Client* may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so from any payment due to the *Contractor* under this Contract, or recover such sum from the *Contractor* as a debt.

83.6 For the avoidance of doubt, it is agreed that nothing in this clause relieves the *Contractor* from any of its obligations and liabilities under this Contract.

83.7 In the Insurance Table provided in NEC4 ECSC clause 83.3, the first paragraph under the heading of "Insurance against" is deemed to be amended to read:

"Liability of the *Contractor* for claims made against him arising out of his failure to use the skill, care and diligence required by the Contract Standard".

Z10 Clause 88 – Professional Indemnity Insurance

Insert new clauses

88.1 The *Contractor* maintains professional indemnity insurance:

- upon customary and usual terms and conditions prevailing for the time being in the insurance market
- with reputable insurers lawfully carrying on such insurance business in the United Kingdom
- with a limit of indemnity of not less than £5 million for any one occurrence or series of occurrences arising out of any one event
- for a period beginning not later than the Contract Date and ending 12 (twelve) years after Completion of the whole of the works

88.2 Such terms and conditions do not include any term or condition to the effect that the *Contractor* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof.

88.3 For the purposes of this clause 88, "commercially reasonable rates" means such level of premium rates at which other Contractors of a similar size and financial standing as the *Contractor* at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the *Contractor's* own claims record or other act, error, omission, negligence, breach, default, matters or things particular to the *Contractor* are deemed to be within commercially reasonable rates.

88.4 The *Contractor* immediately informs the *Client* if such insurance ceases to be available at commercially reasonable rates so that the *Contractor* and the *Client* can discuss means of best protecting the respective positions of the *Client* and the *Contractor* in respect of the services.

88.5 The *Contractor's* obligations in respect of professional indemnity insurance continue after termination of this contract (for any reason).

Z11 Clause 90 – Termination

Amend Clause 90.2 as follows

In the Termination Table:

Insert "R10A" after "R1 – R10" in the "Reason" column for the *Client*

Insert "A3a" after "A1" in the "Amount Due" column for the *Client*

Z12 Clause 91 – Reasons for termination

91.1 insert the following new bullet point:

91.3A "applied to court for, or obtains, a moratorium under Part a1 of the Insolvency Act 1986 (R10A)."

Delete Clause 91.7 and insert

91.7 The *Client* may terminate if the Service Manager certifies that a Force Majeure Event that is preventing the *Contractor* from or is delaying the *Contractor* in Providing the Service has caused or will cause completion of the whole of the service to be delayed by not less than 12 weeks.

13 Clause 93 – Payment on termination

Insert new clause following A3:

A3a

A deduction by or payment to the *Client* of the additional cost to the *Client* of Providing the Service other than by the contract and the amount of any other cost, loss, damage or liability incurred or to be incurred by the *Client* resulting from the termination, and/or from the reason for termination and/or from any other act, error, omission, negligence, breach or default of the *Contractor*.

Additional conditions of contract

Z14 CDM Regulations

The *Contractor* performs all the functions and duties of a Designer [and Principal Designer] as defined in the CDM Regulations, to the extent that the CDM Regulations apply to the *Contractor's* duties under this Contract

Z15 Third Party Agreements

15.1 For the purposes of this clause, "**Third Party Agreements**" means any and all agreements relating to or affecting the works and/or *Site* or the completed works (including the execution of the works and their design) or any part of the works and/or *Site*, which have been entered into or may be entered into by the *Client* from time to time and disclosed to the *Contractor* (whether on or before the date of this contract or after the date of this contract once the *Client* has entered into the same) and any other agreements referred to as such in the Scope.

15.2 The *Contractor* is deemed to have read the Third-Party Agreements and to be fully aware of the obligations, risks and liabilities assumed by the *Client* under them.

15.3 The *Contractor* performs and assumes, as part of its obligations under this contract, the *Client's* obligations, liabilities and risks contained within the Third-Party Agreements that relate to the carrying out of the works as if they were expressly referred to in this contract as obligations, liabilities and risks of the *Contractor*, all other things being equal.

15.4 The *Contractor* ensures that no act, error, omission, negligence, breach or default on its part or on the part of any Subcontractor in relation to the performance by the *Contractor* of its obligations under this contract causes, contributes or otherwise gives rise to any breach by the *Client* of any of its obligations under the Third-Party Agreements.]

Z17 Rights of Third Parties

Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this contract pursuant to the Contracts (Rights of Third Parties) Act 1999. This clause Z17 shall not affect or prevent any assignees who take the benefit of this contract pursuant to clause 25 or successors in title to the *Client* from enforcing the provisions of this contract.

Z18 Requirements for Instructions

In the case of any ambiguity or inconsistency between two or more of the documents forming this Contract, each prevails over or is subordinate to the other(s) in descending order as follows:

- Option Z – Additional Conditions of Contract (z clauses)
- the conditions of contract other than the z clauses
- the Contract Data provided by the Client
- the programme
- the Early Warning Register
- the Scope
- the Contract Data provided by the Contractor
- any other contract documents

Z19 General Data Protection Regulation (GDPR) Requirements

The Parties shall comply with the General Data Protection Regulation (GDPR) Requirements as set out in Appendix 1 and in accordance with Appendix 2 (Schedule of Processing, Personal Data and Data Subjects).

Contract Data

The *Contractor's* Contract Data

The *Contractor* is

Name

Address for communications

Address for electronic
communications

The *fee percentage* is

N/A

%

The *Contractor's* Offer and *Client's* Acceptance

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

The offered total of the Prices is

The *Client* accepts the *Contractor's* Offer to Provide the Works

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 ('Atamis').**

Price List

Price list to be inserted once winning bid is known

The total of the Prices

The method and rules used to compile the Price List are

TOTAL PRICE (£)

Overview Breakdown as follows:

Activity Heading	Overall Price (£)
1. Movement of Kit on and off site	£
2. Supply welfare facility	£
3. Minor vegetation clearance	£
4. Supply and Install boardwalk	£
TOTAL PRICE (£)	£

The above figures exclude VAT.

A further breakdown for each of the areas can be accessed in attachment Appendix E

No Travel and subsistence will be paid over and above that stated in the pricing document as part of the total fixed price.

Scope

1 Description of the *works*

Headline Info:

- Site visit by contractor is mandatory part of the tender and failure to visit site will result in the contractor been removed from the process
- 120m raised boardwalk
- 3.6m passing bay roughly halfway along
- No handrail
- Toe rail
- Minor vegetation and tree branch clearance required, up to a height of 3m from ground level, where required to gain access to the site

Access Arrangements:

String Lane – off road vehicles required at all times – this lane gets wet and muddy in the winter. Parking is on String Lane, by the wooden pedestrian gate access point at the bottom western edge of the site

A site visit prior to tendering is essential, for contractors to be shown the access arrangements.

Construction Info:

It is anticipated, timber boards will be supported on a raised recycled plastic structure: the recycled plastic element is inducive to a longer lasting structure in damp ground, whilst the timber boards are more aesthetically pleasing for visitors, with less of a visually impact on the site compared to a boardwalk constructed wholly of recycled plastic.

2 Drawings

DRAWING NUMBER	REVISION	TITLE
NA	NA	

No drawings provided

Scope

3 Specifications

See additional attachment "Cothill Boardwalk Specification."

TITLE	DATE OR REVISION
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4 Constraints on how the Contractor Provides the Works

Sensitives:

- The site is a fen; thus, water quality is key for site management. No materials under any circumstances are to be put in the water. No chemical/pesticide/herbicide materials to come onto site.
- Vehicles are not to be taken on site and must remain on String Lane. Vehicles must not block the lane completely, as it is a busy PROW.
- The path this boardwalk will be on is not a PROW, however, is a popular permissive path. Handling of members of the public should be appropriate, and involve directing them to the alternative route, which the site manager will put in temporary signs for, before work begins.
- Under no circumstances should fires be lit - fires can burn extensively and deeply in peat.

Scope

Welfare facilities will be of the standard laid down in the Construction (Design and Management) Regulations or better and the Principal Contractor is to satisfy themselves that the facilities they are providing on site are suitable for the number of people expected to be using the facilities. The location of welfare facilities and any offices required by the Contractor shall be agreed with the Client prior to commencement of the works.

All work is to be conducted in accordance with codes of practice and operators must hold appropriate and current training certification for any machinery or equipment they use. Copies of all current personnel certification must be presented to the Natural England Project Manager, for retention, one week prior to work commencing.

No Travel and subsistence will be paid over and above that stated in the pricing document as part of the total fixed price

5 Requirements for the program

No program to attach, however the contract states to be completed by 30.09.2023, however there is a strong desire to finish as early as possible due to the potential adverse weather conditions.

6 Services and other things provided by the *Client*

ITEM	DATE BY WHICH IT WILL BE PROVIDED
No Plant and Equipment will be supplied	NA
No Gas, Electric or Water will be supplied	NA

Site Information

Actions in an emergency

- Call 999 for the Emergency Services and quote the post code for the access gate
- Call Reserve Warden on the number below
- Report incidents to NE Help-line: 0300 060 0100

Reserve Manager: Steph Wilson – 07552290701
Senior Reserve Manager: Mick Venters – 07970 195 090

Access for vehicles

Gate Postcode	Gate Grid reference	Access point
OX13 6JW	446429, 199639	Car park opposite the Merry Miller pub, Cothill Road, Cothill, Oxfordshire



New
Boardwalk
location

-  Year round pond
-  Areas prone to deep puddles
-  Entrance gate
-  Internal gates
-  String lane
-  Foot/Vehicle Access
-  Route
-  Boundary of land managed by NE

ALL parts of the reserve can be prone to winter floods

DO NOT drive onto the reserve

Hospital incl A&E: John Radcliffe, Headley Way, Headington, Oxfordshire, OX3 9DU

Police station: Abingdon Police station,
Colwell Drive, Abingdon, OX14 1AU
Tel 101 to make an appointment.

Fire Brigade: Abingdon Fire Station, Ock Street, Abingdon, OX14 5DH

Contractors - Signature

Authorities - Signature