**NEC4 Engineering and Construction Short Contract**

**(June 2017 with amendments January 2019)**

**Contract Data**

in relation to *works* for

**Design and Build of a Glasshouse at Forest Research’s Northern Research Station (NRS)**

**Reference:** **CR2020/21/067**

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| **The *Client’s* Contract Data** |
| The *Client* is |
| Name | Forest Research (the research agency of the Forestry Commission) |
|  |
| Address for communications | Edward Shephard, Programme Manager, 620 Bristol Business Park, Coldharbour Lane, Bristol BS16 1EJ |
|  |
| Address for electronic communications | edward.shephard@forestresearch.gov.uk |
|  |
| The *works* are | Design and build of a glasshouse at Forest Research’s Northern Research Station in Roslin |
|  |
| The *site* is | Located within Forest Research’s Northern Research Station, Bush Estate, Roslin, Midlothian, EH25 9SY as identified in the Site Information |
|  |
| The *starting date* is | TBA, a date early enough to allow the *works* to be completed no later than end of September 2021 |
|  |
| The *completion date* is | No later than 30 September 2021 |
|  |
| The *delay damages* are | N/A | per day |
|  |
| The *period for reply* is | 2 weeks |  |
|  |
| The *defects date* is | 52 weeks | after Completion |
|  |
| The *defect correction period* is | 4 weeks |  |
|  |
| The *assessment day* is the | Last day | of each month |
|  |
| The *retention* is  | 0 | % |
|  |
| The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does apply.  |
|  |
| The *Adjudicator* is |
| Name | Institution of Civil Engineers  |
|  |
| Address for communications | 1, Great George Street, Westminster, London |
|  |
| Address for electronic communications | communications@ice.org.uk |
|  |
| For any one event, the liability of the *Contractor* to the *Client* for the loss of or damage to the *Client’s* property is limited to | £500,000 or the amount of cover provided by the *Contractor’s* standard Public/Third Party Liability Insurance, whichever is the larger amount |
|  |
| The *Client* provides this insurance | None |
|  |
| The minimum amount of cover for the third insurance stated in the Insurance Table is, for any one event | £ 2,000,000 |
|  |
| The minimum amount of cover for the fourth insurance stated in the Insurance Table is, for any one event | £ 2,000,000 |
|  |
| The minimum amount of cover for insurance against claims made against the *Contractor* arising out of the Contractor’s failure to use the skill and care normally used by professionals providing services similar to the service, for any one claim is | £ 1,000,000 |
|  |
| The *Adjudicator* nominating body is | Institution of Civil Engineers |
|  |
| The *tribunal* is | Adjudication |
|  |
| The *conditions of contract* are the NEC4 Engineering and Construction Short Contract June 2017, (with amendments January 2019) and the additional *conditions of contract* clauses Z1 to Z18 |

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| **Z Clauses** |
|  |  |
| **Z1** | **Changes to core & Secondary Option clauses** |
| 11.2 | Add the following defined terms: (17) **Anti-Slavery Law** shall mean any and all statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decisions of the European Council, decrees and laws (including any common law or civil law judgment, demand, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act.(18) **Audit Agents** shall mean the *Client’s* internal and external auditors; the National Audit Office; HM Treasury or the Cabinet Office; any authority appointed by the *Client* to carry out an audit or similar review; successors to any of the above Parties.(19) **Change of Control** is an event where any single person, or group of persons acting in concert, acquires Control of the *Contractor* or acquires a direct or indirect interest in the relevant share capital of the *Contractor*, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Contractor*.(20) **Contractor’s Personnel** are employees, agents and consultants employed by the *Contractor* or any subcontractor to Provide the Works.(21) **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010.(22) **Controller** is the single person (or group of persons acting in concert) that * has Control of the *Contractor* or
* holds or controls the largest direct or indirect interest in the relevant share capital of the *Contractor*.

(23) **Disclosure Request** is a request for information relating to the contract a received by the *Client* pursuant to the Freedom of Information Act (FOIA) 2000 and Environmental Information Regulations 2004 or otherwise.(24) **Discrimination Acts** are the Equality Act 2010 and any predecessor statutes.(25) **Intellectual Property Rights or IPRs** are copyright and related rights, database rights, design rights, topography rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.).(26) **Modern Slavery Practice** shall mean any practice that amounts to 1. slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended),
2. forced or compulsory labour (as defined by the International Labour Organisation’s Forced Labour Convention 1930 (No. 29) and Protocol)
3. human trafficking or
4. the arranging or facilitation of the travel of another person with a view to that person being exploited.

(27) **Public Interest Test** requires a public authority, or oversight body, to weigh the harm that disclosure would cause to the protected interest against the public interest saved by disclosure of the information.(28) **Regulated Activity** shall have the meaning given in the Safeguarding Vulnerable Groups Act 2006 as amended. |
|  | Delete or Change the following clauses: **11 Identified and defined terms**11.2 (4) Change clause to: A Defect is a part of the *works* which is not: * in accordance with the Scope
* in accordance with the applicable law or the *Contractor’s* design which the *Client* has accepted.

**51 Payment**51.2 Delete this clause**81 Contractor’s liabilities**81.1 Add the following bullet point: * A fault in the design carried out by the Contractor.

**83 Insurance cover**83.3 Insurance Table - Add the following row:

|  |  |
| --- | --- |
| Liability arising out of the *Contractor’s* failure to use skill and care normally used by professionals providing work similar to the *works*  | The amount stated in the Contract Data |

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|  |  |
| **Z2** | **Interpretation** |
| Z2.1 | In the contract, except where the context shows otherwise:* references to a document or policies include any revision made to it in accordance with the contract;
* references to a statute or statutory instrument include any amendment, consolidation, extension, re-enactment or replacement of it from time to time and any subordinate legislation or code of practice made under it;
* references to a British, European or International standard include any current relevant standard that replaces it;
* references to persons or organisations include bodies corporate, unincorporated associations, partnerships and any other legal entity; and
* the words “includes” or “including” are construed without limitation.
 |
| **Z3** | **Assignment and transfer** |
| Z3.1 | The *Contractor* does not assign, transfer, sub-contract, sub-let, novate or otherwise change the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the *Client.* |
| Z3.2 | If the *Contractor* wishes to transfer the benefit and burden of the contract to a new contractor, it seeks the *Client’s* agreement to do so. The *Contractor* explains the reasons for the proposed transfer and provides the *Client* with all such information as the *Client* may require in order to makes its decision. If the *Client* (in its absolute discretion) agrees to the proposed transfer, the Parties and the new contractor execute a novation in the form as the *Client* may reasonably require. |
| Z3.3 | If requested by the *Client*, the *Contractor* executes a novation agreement in a form as the *Client* may reasonably require transferring the benefit and burden of the contract to* an organisation established to take over the *Client's* functions or part of them,
* another public body exercising similar functions,
* a Department or Office of Her Majesty's Government or
* a local authority
 |
| **Z4** | **Confidentiality** |
| Z4.1 | The *Contractor* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person * the terms of this contract and
* any confidential or proprietary information 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 anyone employed by it or acting on its behalf 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 governmental agency, provided that prior to disclosure the *Contractor* consults the *Client* and takes full account of the *Client’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 *Client*
 |
| Z4.2 | The *Contractor* does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Works. |
| **Z5** | **Official Secrets Act and Finance Act** |
| Z5.1 | The Official Secrets Act 1989 & Section 182 of the Finance Act 1989 applies to the contract from the *starting date* until the *completion date.* |
| Z5.2 | The *Contractor* notifies its employees and subcontractor (at any stage of remoteness from the Client) of its duties under the Official Secrets Act 1989 & Section 182 of the Finance Act 1989. |
| Z5.3 | A failure to comply with this section is treated as a substantial failure by the *Contractor* to comply with its obligations. |
| **Z6** | **Disclosure Requests** |
| Z6.1 | The *Contractor* acknowledges that the *Client* may receive a Disclosure Request and the *Client* may be obliged (subject to the application of any relevant exemption and where applicable the Public Interest Test) to disclose information (including commercial sensitive information) pursuant to a Disclosure Request.  |
| Z6.2 | The *Contractor* promptly passes any Disclosure Request received to the *Client.* |
| Z6.3 | When requested to do so by the *Client*, the *Contractor* promptly provides information in its possession relating to the contract and assists and co-operates with the *Client* to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation. |
| Z6.4 | The *Contractor* does not respond directly to a Disclosure Request unless instructed to do by the Client*.* |
| Z6.5 | The *Contactor* acknowledges that the *Client* is obliged to publish information relating to the contract in accordance with Procurement Policy Note 01/17 entitled Update to Transparency Principles dated 6 February 2017 except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Client* consults with the *Contractor* before deciding whether the information is exempt, but the *Contractor* acknowledges that the *Client* has the final decision. |
| Z6.6 | The *Contractor** co-operates with and assists the *Client* to enable the *Client* to comply with its obligations under to publish information in accordance with PPN 01/17or
* agrees with the *Client* a schedule for the release to the public of information relating to the *Client* in accordance with the terms of the PPN 01/17,
* provides information to assist the *Client* in responding to queries from the public PPN 01/17 as required by the *Client* and
* supplies the *Client* with financial data relating to the contract in the form and in the times specified in the PPN.
 |
| **Z7** | **Fraud, Bribery & Corruption** |
| Z7.1 | The *Contractor* complies with (and ensures that any person employed by it or acting on its behalf complies) and does not commit any act or omission which causes or could cause it or the *Client* to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption (including without limitation the Bribery Act 2010). |
| Z7.2 | A failure to comply with this section is treated as a substantial failure by the *Contractor* to comply with itsobligations. |
| **Z8** | **Records and audit access** |
| Z8.1 | The *Contractor* keeps documents and information obtained or prepared by the *Contractor* or any subcontractor in connection with the contract for a period of 6 years after the *completion date.*  |
| Z8.2 | The *Contractor* permits the *Client* or its Audit Agents to examine documents held or controlled by the *Contractor* or any subcontractor (at any stage of remoteness from the *Client*). |
| **Z9** | **Termination - Public Contract Regulations 2015** |
| Z9.1  | The *Client* may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the Contract Date.  |
| Z9.2 | The *Client* may terminate the contract with immediate effect * if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
* the Court of Justice of the European Union declares in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive 2014/24/EU has occurred.
 |
| **Z10** | **Discrimination, Bullying and Harassment** |
| Z10.1 | The *Contractor* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Discrimination Acts. |
| **Z11** | **Safeguarding Vulnerable Groups** |
| Z11.1 | If the *Contractor* is engaged in any Regulated Activity under the terms of this Contract the *Contractor* will have ultimate responsibility for the management and control of the Regulated Activity provided and for the purposes of the Safeguarding Vulnerable Groups Act 2006. |
| Z11.2 | The *Contractor:** ensures that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS);
* monitors the level and validity of the checks under this clause Z11 for each member of staff; and
* does not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to any individuals under the terms of this Contract.
 |
| Z11.3 | The *Contractor* warrants it has no reason to believe that any person who is employed or engaged by the *Contractor* in Providing the Works is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006. |
| Z11.4 | The *Contractor* immediately notifies the *Client* of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause Z11 have been met. |
| Z11.5 | The *Contractor* refers information about any person carrying out the services to the DBS where it removes permission for such person to carry out any of the Service (or would have if such person had not otherwise ceased to carry out the services) because in its opinion, such person has harmed or poses a risk of harm to users of the service, children or adults considered to be vulnerable. |
| **Z12** | **Modern Slavery**  |
| Z12.1 | The *Contractor* will not engage in any Modern Slavery Practice. The *Contractor* complies with all applicable human rights and employment laws in the jurisdictions in which they work and have robust means of ensuring that the subcontractors (at any stage of remoteness from the *Client)* also comply. |
| Z12.2 | The *Contractor*:* conducts proper and detailedchecks on Contractor’s Personnel (in each case whether they are engaged on a permanent or temporary basis), subcontractors and other participants in its supply chains, to ensure that they do not engage in any Modern Slavery Practice or abuse of human rights;
* provides the *Client* with such assistance and information as it may require from time to time to enable the *Client* to:
	+ perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Law or as required by the *Client;*
	+ prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015 and to include the matters referred to in section 54(5) of that Act;
	+ identify any non-compliance; and
	+ conduct due diligence and to measure the effectiveness of the steps the *Client* is taking or wishes to take to ensure that Modern Slavery Practices or abuse of human rights are not taking place in its business or supply chains;
* permits the *Client,* and any person nominated by it for this purpose to have access on demand to the *Contractor’s* premises, personnel, systems, books and records as the *Client* may require to verify the *Contractor’s* compliance with this clause Z12.
 |
| Z12.3 | The *Contractor* notifies the *Client* as soon as it becomes aware of:* any actual or suspected slavery or human trafficking in any of its subcontractors, supply chains or any part of its business.
* any non-compliance by it or any Contractor Personnel.

The notification will set out full details of the breach or suspected breach or non-compliance. |
| Z12.4 | The *Client* will be entitled, by giving written notice to that effect to the *Contractor*, to require the *Contractor* to:* remove from the performance of this Contract any of the Contractor’s Personnel or subcontractors whom the *Client* believes to be engaging in any Modern Slavery Practice; or
* take such action as the *Client* requires to ensure that the *Contractor* fully complies with any Anti-Slavery Law.
 |
|   | A failure to comply with this section is treated as a substantial failure by the *Contractor* to comply with its obligations. |
| **Z13** | **Intellectual Property Rights (IPRs)** |
| Z13.1 | Nothing done by the *Contractor* in Providing the Works shall infringe any Intellectual Property Rights of any third party and the *Contractor* shall indemnify the *Client* against all actions, claims, demands, costs and expenses which the *Client* may suffer or incur as a result of or in connection with any breach of this clause. |
| Z13.2 | All Intellectual Property Rights in material prepared in connection with this Contract, shall be owned by the *Client* and the *Contractor* hereby as beneficial owner assigns and agrees to assign to the *Client* upon the creation of the same with full title guarantee. |
| Z13.3 | All Intellectual Property Rights in any material prepared in connection with this contract:* furnished to or made available to the *Contractor* by the *Client* remain vested in the *Client* or the Crown (as the case may be); and
* the *Contractor* and the Contractor’s Personnel shall not, except to the extent necessary for the implementation of this contract, use or disclose any such material, without prior written consent of the *Client.*
 |
| Z13.4 | The *Contractor* shall promptly and fully disclose in full all material prepared in connection with this contract, to the *Client* as soon as reasonably practicable upon the creation of the same. |
| Z13.5 | The *Contractor* shall execute any document and do anything as may be required to ensure that all rights referred to in Condition Z13.2 are vested in the *Client* or the Crown. |
| Z13.6 | The *Contracto*r ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause. |
| Z13.7 | The *Contractor* waives or procures a waiver of any moral rights it may have in terms of Copyright, Designs and Patents Act 1988, and any similar rights available in any part of the world, assigned to the *Client* pursuant to the contract. |
| **Z14** | **Value Added Tax (VAT)**  |
| Z14.1 | The *Contractor* shall indemnify the *Client* on a continuing basis against:* all actions, proceedings, claims, expenses, awards, costs and all other liabilities during the period of the Contract or following termination of the contract in relation to any tax, employer's national insurance contributions or other expenses payable in respect of the Contractor’s Personnel in relation to the provision of the *works*; and
* any loss suffered as a result of any sums paid to the *Contractor* in respect of VAT not being recoverable as allowable input tax for VAT purposes under the Value Added Tax Act 1994 (as amended from time to time).
 |
| **Z15** | **Insurance requirements** |
| Z15.1 | The *Contractor* discharges all its obligations under the Insurance Act 2015 when placing, renewing or maintaining any insurances required but the contract, including:* complying with the duty of fair presentation to the insurers and
* taking the actions needed to protect the *Client’s* separate interest where the *Client* is required to be named as an insured party.
 |
| **Z16** | Not Used |
|  |  |
| **Z17** | **Change of Control and financial distress** |
| Z17.1 | The *Contractor* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur except to the extent that (and for as long as) it is prevented from doing so by any disclosure restriction imposed on it by any tribunal or regulatory authority.  |
| Z17.2 | The *Contractor* notifies the *Client* immediately of any material change in* the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Contractor*, or
* the composition of the *Contractor*. A change is material if it directly or indirectly affects the performance of this contract by the *Contractor* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015.
 |
| Z17.3 | The *Contractor* notifies the *Client* immediatelyof any change or proposed change in the name or status of the *Contractor*. |
| Z17.4 | The *Contractor* notifies the *Client* immediately if any of the following events occurs in relation to the *Contractor:* * it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
* it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
* it commits a material breach of its covenants to its lenders or
* its financial position or prospects deteriorate to such an extent that it would not meet the Financial Standing Test.
 |
| Z17.5 | If the *Contractor* fails to notify the *Client* that an event listed in clause Z17.4 has occurred, the *Client* may treat such failure as a substantial failure by the *Contractor* to comply with its obligations. |
| **Z18** | **The *Contractor’s* Design**  |
| Z18.1 | The *Contractor* carries out design necessary to Provide the Works. |
| Z18.2 | The *Contractor* submits the particulars of its design as the Scope requires to the *Client* for acceptance. A reason for not accepting the *Contractor’s* design is that it does not comply with either the Scope or the applicable law. The *Contractor* does not proceed with the relevant work until the *Client* has accepted its design. |
| Z18.3 | The *Contractor* retains copies of drawings, specifications, reports and other documents which record the *Contractor’s* design for 12 months post Completion. The copies are retained in the form stated in the Scope. |
| Z18.4  | The *Client* may use and copy the *Contractor’s* design for any purpose connected with construction, use, alteration or demolition of the Works unless otherwise stated in the Scope and for other purposes as stated in the contract. The *Contractor* obtains from a Subcontractor equivalent rights for the *Client* to use material prepared by the Subcontractor. |

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| **The *Contractor’s* Contract Data** |
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| The *Contractor* is |
| Name |   |
|  |
| Address for communications |   |
|  |
| Address for electronic communications |   |
|  |
| The *fee percentage* is |  | % |
|  |
| The *people rates* are |
| category of person | unit | rate |
|  |
|   |  |   |  |   |
|  |
|   |  |   |  |   |
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|   |  |   |  |   |
|  |
|   |  |   |  |   |
|  |
| The *published list of Equipment* is |   |
|  |
| The *percentage for adjustment for Equipment* is |  % (state plus or minus) |
|  |