

in partnership with



*Tender for the provision of public art commissions in faughan valley woodlands, glenshane road, bt47 3sn.*

**Tender submission deadline: 4pm FRIDAY 4TH SEPTEMBER 2020**

***Document 5 of 8 – ITT CONTRACT DATA***

# 1. CONTRACT DATA

**The Employer is**

**Name Woodland Trust**

**Address** 1 Dufferin Ave, Bangor BT20 3BX

**Telephone**  [028 9127 5787](https://www.google.com/search?q=wOODLAND+TRUST+BANGOR&oq=wOODLAND+TRUST+BANGOR&aqs=chrome..69i57j0l2.5729j0j15&sourceid=chrome&ie=UTF-8)

**Email Address**

**The Works are** Artistic services as per Scope Document

**The Site is** Faughan Valley Woodlands, address….

**The *starting* date is** To be confirmed on award.

**The *completion* date is** 12 months after award.

**The *period* for reply is** 2 weeks

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

**The *defect correction period* is** 2 weeks except that:

The defect correction period for notified defects which affect public safety is 2 hours from when the defect is first reported to Contractor

**The *delay damages* are** N/A

**The *assessment* day is the** TBC

**The retention is** 3% on construction elements (to be confirmed at stage 3)

**Does the United Kingdom Housing Grants,**

**Construction and Regeneration Act (1996) apply?**

Yes

**The Adjudicator is**

**Name**  TBC

**Address**  TBC

**Telephone**  TBC

**Email address**  TBC

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

*0.5% per complete week of delay*

**The Employer provides this insurance:**

*None*

**The minimum amount of cover for the third insurance states in the insurance table is:**

*£10m in respect of each claim, without limit to the number of claims*

**The minimum amount of cover for the fourth insurance states in the insurance table is:**

*£10m in respect of each claim, without limit to the number of claims*

**The Adjudicator nominating body is:** *The Institution of Civil Engineers*

**The Tribunal is** *Arbitration*

**If the tribunal is arbitration, the arbitration procedure is:**

*The Institution of Civil Engineers Arbitration Procedure*

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

**Z1: Option Z Additional conditions of contract**

Z1.1 The additional conditions of contract stated in the Contract Data are part of this contract.

**Z2: Identified and Defined Terms**

Add New Defined Terms:

11.2(120) The Notice of Written Warning and the Notice of Unsatisfactory Performance are Notices which are issued to the Contractor if it has performed unsatisfactorily and has not improved performance within a specified time set by the *Employer*.

A Contractor concurrently in receipt of multiple Notices of Written Warning on one or more Government contracts may be excluded from future procurement competitions, undertaken by Centres of Procurement

Expertise on behalf of bodies covered by Northern Ireland Public Procurement Policy, for a period of 12 months from the date of issue of the last Notice of Written Warning.

A Contractor in receipt of a Notice of Unsatisfactory Performance on a Government contract may be excluded from future procurement competitions, undertaken by Centres of Procurement Expertise on behalf of bodies covered by Northern Ireland Public Procurement Policy, for a period of 3 years from the date of issue of the Notice.

Further information on the process associated with the issue of these Notices can be found in the Protocol for Managing Poor Supplier Performance contained within Procurement Guidance Note PGN 01/12 – Contract Management Principles and Procedures. The guidance is available at the following link: https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0112-contract-managementprinciples-and-procedures

11.2(121) A Contracting Authority is a contracting authority as defined in The Public Contracts Regulations 2015, or relevant succeeding rules. Contracting Authorities include Departments of the Northern Ireland Civil Service.

11.2(122) A Department is a body subject to Northern Ireland Public Procurement Policy including Northern Ireland Civil Service Departments, their Agencies, Non-Departmental Public Bodies and Public Corporations.

11.2(123) An Unqualified Person is as defined in Article 62(2) of the Fair Employment and Treatment (Northern Ireland) Order 1998.

11.2(124) FOIA is the Freedom of Information Act 2000.

11.2(125) Fraud is any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

11.2(126) Staff are all persons employed by the Contractor to perform its obligations under the contract together with the Contractor’s servants, agents, suppliers and Subcontractors used in the performance of its obligations under the contract.

11.2(127) Good Industry Practice is standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

11.2(128) An Occasion of Tax Non-Compliance is:

· any tax return of the Contractor, submitted to a Relevant Tax Authority on or after 1 October 2012, found on or after 1 April 2013 to be incorrect as a result of: ─ a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ─ the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime. · any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 giving rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion.

11.2(129) DOTAS is the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

11.2(130) General Anti-Abuse Rule is the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

11.2(131) Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.

11.2(132) Relevant Tax Authority is HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

11.2(147): Confidential Information is designated as such by the Employer. It shall include all material nonpublic information, written or oral, disclosed directly or indirectly, through any means of communication or observation by the Employer or any of its affiliates or representatives to or for the benefit of the Employer.

11.2(148) The Contractor’s Quality Submission is all information provided by the Contractor at Invitation to Tender stage in response to quality questions and quality award criteria which has been requested by the Employer.

**Z4: Payment**

Add new clause 51.3

The Contractor submits information to assist the Employer to assess the amount due not less than three days before the assessment day. The Employer certifies a payment within one week of each assessment day. Within 7 days the contractor submits a VAT invoice (if VAT registered) for the amount payable to be certified by the Employer. If the Contractor fails to submit an invoice within 7 days then the final date for payment is postponed by the same number of days as the time taken to submit the invoice exceeds 7 days.

The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the Contractor to the Employer if the change reduces the amount due. Other payments are made by the Employer to the Contractor. Payments are in the currency of this contract unless otherwise stated in this contract.

**Z6: Option W2**

Z6.1: DELETE the words ‘(used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies) from the heading in Option W2 and replace with: ‘(used when the Construction Contracts (Northern Ireland) Order 1997 as amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011 applies)’.

**Z7: Option Y(UK)2**

Z7.1: Delete the words ‘the United Kingdom Housing Grants, Construction and Regeneration Act 1996 as

amended by the Local Democracy, Economic Development and Construction Act 2009 (the Act)’ from the heading in page CC 12 of 12 and replace with. ‘The Construction Contracts (Northern Ireland) Order 1997 amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011’.

Z7.2: Delete the word ‘Act’ in line 1 of clause 1.4 Page CC 12 of 12 and replace with ‘Order’.

**Z8: Assignment and novation**

Add new clause Z 8

Z8.1: The Employer may assign, novate or otherwise dispose of its entire rights and obligations under this contract or any part thereof without the consent of the Contractor to: · any Contracting Authority, or · any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Employer,

provided always that where such assignment, novation or other disposal increases the burden of the Contractor’s obligations under this contract, the Contractor is entitled to such additional payment as may be reasonable to compensate for such additional burden. References to the Employer shall include its permitted assignees.

Z8.2: The Contractor shall not without the written consent of the Employer assign, novate or in any way dispose of the benefit and/or the burden of the contract or any part of the contract. The Employer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, novation or disposal. The Contractor shall be responsible for the acts and omissions of its Subcontractors as though those acts and omissions were its own.

**Z10: Information and data**

Add new clause Z10

**Confidentiality, Transparency and Publicity**

Z10.1: Subject to clause Z10.2, each Party shall: · treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and · not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the contract.

Z10.2 Notwithstanding clause Z10.1, a Party may disclose Confidential Information which it receives from the other Party:

· where disclosure is required by applicable law or by a court of competent jurisdiction; · to its auditors or for the purposes of regulatory requirements; · on a confidential basis, to its professional advisers; · to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010; · where the receiving Party is the Contractor: ─ to the Staff on a need to know basis to enable performance of the Contractor’s obligations under the contract provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause shall observe the Contractor’s confidentiality obligations under the contract.

· where the receiving Party is the Employer: ─ on a confidential basis to the employees, agents, consultants and Contractors of the Employer; ─ on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Employer transfers or proposes to transfer all or any part of its business; ─ to the extent that the Employer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or ─ in accordance with clause Z10.5.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Employer under clauses Z10.2 and Z10.3.

Z10.3: The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the contract is not Confidential Information and the Contractor hereby gives its consent for the Employer to publish this contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the contract agreed from time to time. The Employer may consult with the Contractor to inform its decision regarding any redactions, but shall have the final decision in its absolute discretion whether any of the content of the contract is exempt from disclosure in accordance with the provisions of the FOIA.

Z10.4: The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the contract or any part of the contract in any way, except with the prior written consent of the Employer.

Z10.5: When handling Employer data and / or confidential information, the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Employer as notified to the Contractor from time to time.

Freedom of Information Z10.6: The Contractor acknowledges that the Employer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall: · provide all necessary assistance and cooperation as reasonably requested by the Employer to enable the Employer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004; · transfer to the Employer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt; · provide the Employer with a copy of all Information belonging to the Employer requested in the Request for Information which is in its possession or control in the form that the Employer requires within 5 Working Days (or such other period as the Employer may reasonably specify) of the Employer's request for such Information; and · not respond directly to a Request for Information unless authorised in writing to do so by the Employer.

Z10.7: The Contractor acknowledges that the Employer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Employer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

Z10.8: Notwithstanding any other provision in the Agreement, the Employer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

**Z11: Prevention of fraud**

Add new clause Z11

Z11.1: The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Employer.

Z11.2: The Contractor shall notify the Employer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

Z11.3: If the Contractor or its Staff commits Fraud in relation to this or any other contract with any Contracting Authority (including the Employer), the Employer may:

· terminate the Contractor’s obligation to Provide the Works, in accordance with clause 90.3 Reason 2, and recover from the Contractor the amount of any loss suffered by the Employer resulting from the termination, including the cost reasonably incurred by the Employer of making other arrangements for the completion of the whole of the works and any additional expenditure incurred by the Employer throughout the remainder of the contract period; or · recover in full from the Contractor any other loss sustained by the Employer in consequence of any breach of this clause.

**Z12: Bribery Act 2010**

Add new Clause Z12

Z12.1: The Contractor is to:

· have and maintain in place throughout the contract period policies and procedures to ensure compliance with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will ensure that all such policies and procedures are enforced; · comply with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and with their own anti-bribery and anti-corruption policies (including any relevant industry code on anti-bribery and anti-corruption), in each case as may be updated from time to time; and · not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 (or which would constitute such an offence if the offending activity, practice or conduct had been carried out in the United Kingdom).

Z12.2: The Employer may terminate the Contractor’s obligation to Provide the Works in accordance with clause 90.3 Reason 2 (ECSC) if the Contractor or its Staff breaches clause Z12.1. If the breach is due to a Subcontractor, the Employer may not terminate providing the Contractor replaces the Subcontractor within 30 days.

Z12.3: The Employer may terminate the Contractor’s obligation to Provide the Works in accordance with clause 90.3 Reason 2 (ECSC) if the Contractor fails to replace within 30 days a Subcontractor who has

breached clause Z12.1.

**Z15: Application to Northern Ireland**

Add new clause Z15 Z15.1: Where this contract refers to an Act of Parliament and/or a regulation which does not extend to Northern Ireland, the clause is amended to refer to the relevant Northern Ireland legislation and/or regulation. Z2: Identified and defined terms

Z20: Option Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

Z20.1: Delete clause Y3.1 and replace with:

Y3.1: Subject to the express rights of any person under any collateral warranty arrangement granted under the provisions of this contract, this contract does not create any right under the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to it.

**Z23: Intellectual Property Rights and indemnity**

Add new clause Z23

Z23.1: All Intellectual Property Rights in any materials provided by the Employer to the Contractor for the purposes of this contract, shall remain the property of the Employer but the Employer hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the contract for the sole purpose of enabling the Contractor to perform its obligations under this contract.

Z23.2: All Intellectual Property Rights in any materials created or developed by the Contractor pursuant to the contract or arising as a result of Providing the Works shall vest in the Contractor. If, and to the extent, that any Intellectual Property Rights in such materials vest in the Employer by operation of law, the Employer hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).

Z23.3: The Contractor hereby grants the Employer:

· a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all Intellectual Property Rights in the materials created or developed pursuant to the contract any Intellectual Property Rights arising as a result of Providing the Works; and · a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use: · any Intellectual Property Rights vested in or licensed to the Employer on the date of the contract; and · any Intellectual Property Rights created during the contract but which are neither created or developed pursuant to the contract nor arise as a result of Providing the Works, including any modifications to or derivative versions of any such Intellectual Property Rights, which the Employer reasonably requires in order to exercise its rights and take the benefit of the contract including the works.

**Z28: Using the contractor’s design**

Add new clause Z28

The Contractor grants to the Employer an irrevocable, non-exclusive, royalty-free licence to use and

reproduce any of the Documents for any purpose connected with the works and to grant sub-licences in the terms of this licence but the copyright in the Documents shall remain vested in the Contractor. The Contractor is not liable for any use of the Documents for any purposes other than those for which the same are or were prepared. The Employer shall on written request, be entitled to be supplied by the Contractor, with copies of the Documents as stated in the Works Information.

The Contractor warrants that the use of the Documents for the purposes of the works will not infringe the rights of any third person. The Contractor will indemnify, and keep indemnified, the Employer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Employer as a result of or in connection with any claim made against the Employer for actual or alleged infringement of a third party’s copyright arising out of, or in connection with, the construction or use of the works, to the extent that the claim is attributable to the acts or omission of the Contractor or Staff.