



# Engineering and Construction Contract

OPTION C: TARGET CONTRACT WITH ACTIVITY SCHEDULE

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## Hoad's Wood Waste Clearance

### Contract Data Forms

June 2017

(with amendments January 2023)

#### Template version history

Version	Purpose	Date
V1.1	Draft for SU, DGC and CSM review	10/09/2024
V2.0	For Tender Issue	13/09/2024
V3.0	Revised Compensation Events and EWR	31/10/2024
V4.0	ECC PM & Sup. info added	01/11/2024

## Contract Execution

This agreement is made on 01/11/2024 between the *Client*, the *Contractor* and the Named Suppliers.

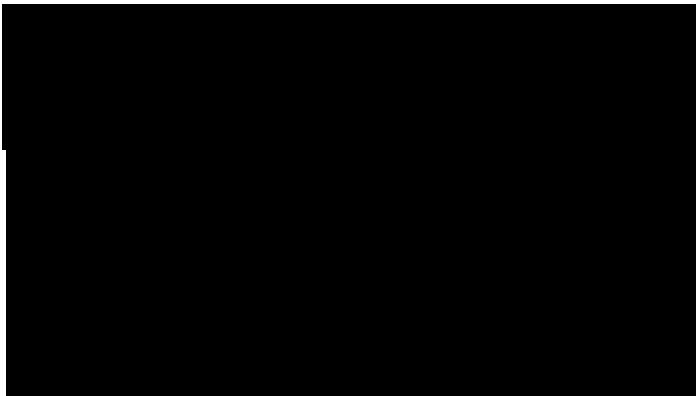
Terms in this agreement have the meanings given to them in the contract between the Environment Agency and Acumen Waste Services Limited for Hoad's Wood Waste Clearance (the *works*).

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

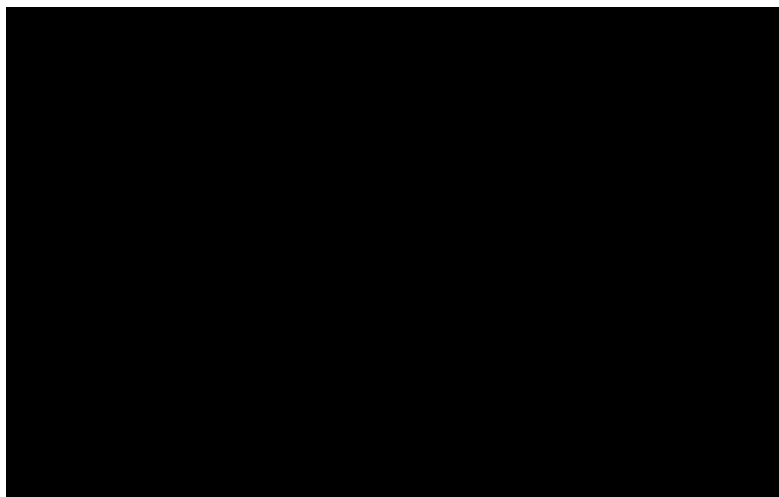
### Executed under hand

by

**Environment Agency** (*Client*)



**Acumen Waste Services Limited** (*Contractor*)



# Contract Data

## PART ONE – DATA PROVIDED BY THE CLIENT

### 1 General

The *conditions of contract* are the core clauses, the clauses for main Option C, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2023)

Main Option

C

Option for resolving and avoiding disputes

W2

Secondary Options

X2 Changes in the Law  
X7 Delay Damages  
X11 Termination by the *Client*  
X15 The *Contractor's* design  
X18 Limitation of Liability  
Y(UK)1 Project Bank Account  
Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996  
Y(UK)3: The Contracts (Rights of Third Parties) Act 1999  
Z: Additional conditions of contract

The *works* are

The removal and disposal of 30,000T of illegally deposited waste from Hoad's Wood, Ashford, Kent.

The *Client* is

Name

Environment Agency

Address for communications

Horizon House  
Deanery Road  
Bristol BS1 5AH

Address for electronic communications

The *Project Manager* is

Name

Address for communications

Address for electronic communications

The *Supervisor* is

Name

Address for communications

Address for electronic communications

The Scope is in	<div>Hoads Wood ECC Scope Final v2.0</div>		
The Site Information is in	<div>Hoads Wood ECC Site Information</div>		
The <i>boundaries of the site</i> are	<div>Shown on Drawing ENV6007301R_0002</div>		
The <i>language of the contract</i> is	<div>English</div>		
The <i>law of the contract</i> is the law of	<div>the law of England and Wales, subject to the jurisdiction of the courts of England and Wales</div>		
The <i>period for reply</i> is	<div>2 weeks</div>	except that	
• The <i>period for reply</i> for	<div>n/a</div>	is	<div></div>
• The <i>period for reply</i> for	<div></div>	is	<div></div>
The following matters will be included in the Early Warning Register			
<div>None</div>			
Early warning meetings are to be held at intervals no longer than	<div>4 weeks</div>		

## 2 The Contractor's main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

The *key dates* and *conditions* to be met are

	<i>condition</i> to be met	<i>key date</i>
(1)	<div>n/a</div>	<div></div>
(2)	<div></div>	<div></div>
(3)	<div></div>	<div></div>

The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *works* at intervals no longer than

4 weeks

### 3 Time

The <i>starting date</i> is	<input type="text" value="29/10/2024"/>
The <i>access dates</i> are	
	date
(1) <input type="text" value="The Site as defined by Drawing ENV6007301R_0002"/>	<input type="text" value="29/10/2024"/>
(2) <input type="text" value="MS Teams / Sharepoint"/>	<input type="text" value="29/10/2024"/>
(3) <input type="text" value="FastDraft"/>	<input type="text" value="11/11/2024"/>
The <i>Contractor</i> submits revised programmes at intervals no longer than	<input type="text" value="Four (4) weeks"/>
If the <i>Client</i> has decided the <i>Completion Date</i> for the whole of the <i>works</i>	<input type="text"/>
Taking over the <i>works</i> before the <i>Completion Date</i>	The <i>Client</i> <b>is not</b> willing to take over the <i>works</i> before the <i>Completion Date</i>
If no programme is identified in part two of the Contract Data	The period after the Contract Date within which the <i>Contractor</i> is to submit a first programme for acceptance is <input type="text" value="Two (2) weeks"/>

### 4 Quality management

The period after the Contract Date within which the <i>Contractor</i> is to submit a quality policy statement and quality plan is	<input type="text" value="Four (4) weeks"/>
The period between Completion of the whole of the <i>works</i> and the <i>defects date</i> is	<input type="text" value="Fifty two (52) weeks"/>
The <i>defect correction period</i> is	<input type="text" value="Four (4) weeks"/> except that
• The <i>defect correction period</i> for	<input type="text"/> is <input type="text"/>
• The <i>defect correction period</i> for	<input type="text"/> is <input type="text"/>

### 5 Payment

The <i>currency of the contract</i> is the	<input type="text" value="GBP Sterling"/>
The <i>assessment interval</i> is	<input type="text" value="1 Month"/>
The <i>interest rate</i> is	<input type="text" value="2.0"/> % per annum (not less than 2) above the
<input type="text" value="Base rate (Bank Rate)"/>	rate of the <input type="text" value="Bank of England"/> bank

The *Contractor's share percentages* and the *share ranges* are

<i>share range</i>		<i>Contractor's share percentage</i>
less than	<div>80</div> %	<div>0</div> %
from	<div>80</div> % to <div>120</div> %	<div>50</div> %
from	<div></div> % to <div></div> %	<div></div> %
greater than	<div>120</div> %	<div>100</div> %

The *exchange rates* are those published in

Financial Times (ft.com)

on 

Starting date

 (date)

## 6 Compensation events

The place where weather is to be recorded is

Site: Ashford  
Lat: 51.1460 Long: 0.8767

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 

09:00

 hours GMT

and these measurements:

None

The *weather measurements* are supplied by

Met Office

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

Site: Ashford  
Lat: 51.1460 Long: 0.8767

and which are available from

Met Office

Where no recorded data are available

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

Undefined

If there are additional compensation events

These are additional compensation events

- Presence of deleterious and hazardous waste for removal.
- Testing for ground contamination.
- Design and pricing of ground remediation.
- Reinstatement of woodland landscape.
- Uplift to Target Price due to increases in Landfill Tax
- Leachate removal
- Any volume of non-hazardous waste over 30,000T
- All required ecological and environmental surveys

## 8 Liabilities and insurance

If there are additional *Client's* liabilities

These are additional *Client's* liabilities

(1) Not Used

(2) Not Used

(3) Not Used

The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the *works* for any one event is

£15,000,000

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

not less than the amount required by law

If the *Client* is to provide Plant and Materials

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

Nil

## Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If Option W1 or W2 is used

The *Senior Representatives* of the *Client* are

Name (1)

Address for communications

Address for electronic communications

	<div></div>
Name (2)	<div></div>
Address for communications	<div></div>
Address for electronic communications	<div></div>
The <i>Adjudicator</i> is	
Name	To be confirmed
Address for communications	To be confirmed
Address for electronic communications	To be confirmed
The <i>Adjudicator nominating body</i> is	The Institution of Civil Engineers



## X5: Sectional Completion

Not Used.

## X7: Delay damages

If Option X7 is used without Option X5 Delay damages for Completion of the whole of the works are  per day

## X10: Information modelling

Not Used.

## X15: The Contractor's design

The period for retention following Completion of the whole of the works or earlier termination is 6 years

The minimum amount of insurance cover for claims made against the Contractor arising out of its failure to use skill and care normally used by professionals designing works similar to the works is, in respect of each claim £10,000,000.00

The period following Completion of the whole of the works or earlier termination for which the Contractor maintains insurance for claims made against it arising out of its failure to use the skill and care is 6 years

## X16: Retention

Not Used.

## X18: Limitation of liability

If Option X18 is used	The Contractor's liability to the Client for indirect or consequential loss is limited to	<input type="text"/>
	For any one event, the Contractor's liability to the Client for loss of or damage to the Client's property is limited to	<input type="text"/>
	The Contractor's liability for Defects due to its design which are not listed on the Defects Certificate is limited to	<input type="text"/>
	The Contractor's total liability to the Client for all matters arising under or in connection with the contract, other than excluded matters, is limited to	<input type="text"/>
	The end of liability date is <input type="text"/> Six (6) years after the Completion of the whole of the works	

## Y(UK)1: Project Bank Account

Charges made and interest paid by the *project bank*      The *Contractor* is to pay any charges made and to be paid any interest paid by the *project bank*

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

The period for payment is  days after the date on which payment becomes due

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

term

beneficiary

## Z: Additional conditions of contract

If Option Z is used

The *additional conditions of contract* are

### Z1 Correctness of Site Information and other documents

Z1.1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the *Client* , but is not warranted correct. Clause 60.3 does not apply to such Site Information and the Contractor is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the *works*.

Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the *Client* but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the Contractor is responsible for checking the correctness of any such information they rely on for the purpose of pricing for, or providing the *works* .

### Z3 Prevention: No change to prices

Delete first sentence of clause 62.2 and replace with:

"Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the *Completion Date* and Key Dates assessed by the Contractor . Quotations for the compensation event described in 60.1(19) comprise any delay to the *Completion Date* and Key Dates assessed by the Contractor.

Delete 'The' At start of clause 63.1 and replace with:

"For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the..."

### Z 6 Payment for Work

Delete existing clause 11.2 (31) and replace with:

"11.2 (31) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the Contractor before the next assessment date plus the Fee, not exceeding the forecast provided under clause 20.4 and accepted by the *Client* ."

### Z7 Contractor's share

After cl54.2 and before cl54.3, insert the following additional clause:

54.2A If, prior to Completion of the whole of the *works*, the Price for Work Done to Date exceeds 111% of the total of the Prices, the amount in excess of 111% of the total of the Prices is retained from the Contractor.

### Z10 Payments to subcontractors, sub consultants and Subcontractors

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for *works* unless another alternative and appropriate form is proposed and agreed in accordance with clause 26.3. Payment to subcontractors will



<p>be 28 days from the assessment date.</p> <p>If the <i>Contractor</i> does not achieve payments within these timescales then the <i>Client</i> reserves the right to delay payments to the <i>Contractor</i> in respect of subcontracted work, services or goods.</p> <p>Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the <i>Contractor's</i> opportunities to work on framework contracts.</p>
<b>Z11 Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999</b>
<p>Z11.1 The <i>Contractor</i> warrants all design complies with the contract whether undertaken by the <i>Contractor</i> or by sub-contractors.</p> <p>Z11.2 All contracts for design employed by the <i>Contractor</i> must include:</p> <ul style="list-style-type: none"> <li>• Y(UK)3 The Contracts Rights of Third Parties) Act 1999</li> <li>• A requirement for the <i>Contractor's</i> to hold Professional indemnity insurance to the value of £2,000,000 and it is the <i>Contractor's</i> responsibility to ensure any sub-contractor holds an adequate level Professional Indemnity insurance cover relevant for the work or services they are providing.</li> <li>• A clause to give the <i>Client</i> (the Environment Agency) the right to enforce the provisions of the Contracts (Right of Third Parties) Act 1999,</li> <li>• A clause to ensure that neither the <i>Contractor</i> nor their sub-contractor can alter the provisions of their sub-contract without the consent of the <i>Client</i></li> <li>• A clause to ensure that the <i>Client's</i> rights against the sub-contractor under this agreement shall be subject to the same conditions, limitations and exclusions as apply to the <i>Contractor's</i> rights against the design consultant under this agreement</li> <li>• A clause to state that except as provided in clause Z11.1, the agreement does not create any right enforceable by any person who is not a party to it (Other Party) under the Contracts (Rights of Third Parties) Act 1999, but the clause does not affect any right or remedy of any other party which exists or is available apart from that Act.</li> </ul>
<b>Z16 Disallowed Costs</b>
<p>Add the following bullets to clause 11.2 (26) Disallowed costs.</p> <ul style="list-style-type: none"> <li>• was incurred due to a breach of safety requirements, or due to additional work to comply with safety requirements.</li> </ul>
<b>Z21 Requirement for Invoice</b>
<p>Add the following sentence to the end of clause 51.1:</p> <p>The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the <i>Project Manager's</i> certificate. Delete existing clause 51.2:</p> <p>51.2 Each certified payment is made by the later of</p> <ul style="list-style-type: none"> <li>• one week after the paying Party receives an invoice from the other Party and</li> <li>• three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.</li> </ul> <p>If a certified payment is late, or if a payment is late because the <i>Project Manager</i> has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made</p>
<b>Z22 Resolving Disputes</b>
Delete W2.1
<b>Z23 Risks and insurance</b>
<p>Replace clause 84.1 with the following</p> <p>Insurance certificates are to be submitted to the <i>Client</i> on an annual basis.</p>
<b>Z200 ECC - Fee adjustment</b>
<p>Delete existing 11.2 (10) and replace with the following clause</p> <p>The Fee is the amount calculated by applying the fee percentage to the Defined Cost excluding the cost of any landfill tax.</p>

## PART TWO – DATA PROVIDED BY THE CONTRACTOR

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

### 1 General

The *Contractor* is

Name

Acumen Waste Services Limited

Address for communications

[REDACTED]

Address for electronic communications

[REDACTED]

The *fee percentage* is

[REDACTED] %

The *working areas* are

Hoads Wood, Ashford, Kent and Remote Contractor locations

The *key persons* are

Name (1)

[REDACTED]

Job

[REDACTED]

Responsibilities

[REDACTED]

Qualifications

[REDACTED]

Experience

[REDACTED]

Name (2)

[REDACTED]

Job

[REDACTED]

Responsibilities

[REDACTED]

Qualifications

[REDACTED]

Experience

[REDACTED]

Name (3)

[REDACTED]

Job

[REDACTED]

Responsibilities	<div>act</div>
Qualifications	<div></div>
Experience	<div></div>
Name (4)	<div></div>
Job	<div></div>
Responsibilities	<div></div>
Qualifications	<div></div>
Experience	<div></div>

The following matters will be included in the Early Warning Register

- Waste Quantity
- Waste Type
- Survey requirements and any associated works
- Extended Programme
- Apportionment of Increase in landfill tax based on delayed start

## 2 The *Contractor's* main responsibilities

If the *Contractor* is to provide Scope for its design      The Scope provided by the *Contractor* for its design is in

None.  
No permanent  
*Contractor* Design

## 3 Time

If a programme is to be identified in the Contract Data      The programme identified in the Contract Data is

As per tender  
programme

If the *Contractor* is to decide the *Completion Date* for the whole of the *works*      The *Completion Date* for the whole of the *works* is

09/06/2025

## 5 Payment

The *activity schedule* is

As tendered

The tendered total of the Prices is

£7,454,564.13

## Resolving and avoiding disputes

If Option W1 or W2 is used      The *Senior Representatives* of the *Contractor* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

## X10: Information modelling

Not Used

## Y(UK)1: Project Bank Account

If Option Y(UK)1 is used      The *project bank* is

*named suppliers* are

Data for the Schedule of Cost Components

The listed items of Equipment purchased for work on the contract, with an on cost charge, are

Equipment	time-related on cost charge	per time period
n/a		

The rates for special Equipment are

Equipment	rate
n/a	

The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are

category of person	rate
n/a	

The rates for Defined Cost of design outside the Working Areas are

category of person	rate
n/a	

The categories of design people whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside the Working Areas are

n/a
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