



Professional Service Contract

Contract Data Forms

June 2017
(with amendments January 2019)

Contract Execution

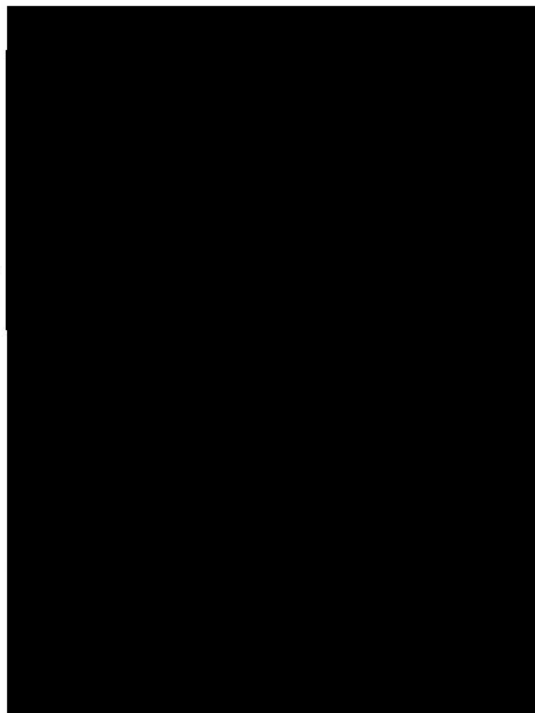
This agreement is made between the *Client*, the *Consultant* and the Named Suppliers.

Terms in this agreement have the meanings given to them in the contract between the Environment Agency and McBains Ltd for the "Pevensey Bay Sea Defences Scheme: Public-Private Partnerships (PPP) Contract – Contract Administrator Role" (the *service*).

The *Consultant* 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.

The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM6165).

Executed under hand



(Named Suppliers)
N/A

Contract Data

PART ONE –

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

1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017 (with amendments January 2019)

Main Option

E

Option for resolving and avoiding disputes

W2

Secondary Options

X2, X9, X10, X11, X18, Y(UK)2, Y(UK)3, Z1, Z2, Z3, Z8, Z9, Z12

The *service* is

Provision of a Contractor Administrator for the *Client's* Pevensey Bay Sea Defences Scheme: Public-Private Partnerships (PPP) Contract

The *Client* is

Name

Environment Agency

Address for communications

Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The *Service Manager* is

Name

Address for communications

Address for electronic communications

The *Scope* is in

PSC Scope – Pevensey v1.0

The language of the contract is

The law of the contract is the law of

The period for reply is except that

The period for reply for is

The period for reply for is

The period for retention is year(s) following Completion or earlier termination

The following matters will be included in the Early Warning Register

N/A

Early warning meetings are to be held at intervals no longer than

2 The Consultant'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

condition to be met	key date
(1) <input type="text" value="N/A"/>	<input type="text" value="N/A"/>
(2) <input type="text"/>	<input type="text"/>
(3) <input type="text"/>	<input type="text"/>

If Option A is used

The Consultant prepares forecasts of the total expenses at intervals no longer than

If Option C or E is used

The Consultant prepares forecasts of the total Defined Cost plus Fee and expenses at intervals no longer than

3 Time

The starting date is

The *Client* provides access to the following persons, places and things

access	access date
(1) Asite	21/08/2023
(2) Sharepoint	21/08/2023
(3) Fastdraft	21/08/2023

The *Consultant* submits revised programmes at intervals no longer than

4 weeks

If the *Client* has decided the completion date for the whole of the service

The completion date for the whole of the service is

31/07/2025

If no programme is identified in part two of the Contract Data

The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is

2 weeks

4 Quality management

The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is

4 weeks, if not previously provided by the *Consultant*

The period between Completion of the whole of the service and the defects date is

26 weeks

5 Payment

The currency of the contract is the

£ sterling

The assessment interval is

Monthly

If the *Client* states any expenses

The expenses stated by the *Client* are

item	amount
N/A	N/A

The interest rate is 2 % per annum (not less than 2) above the

Base rate of the Bank of England bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is 1 Month

If Option C or E is used and the *Client* states any locations

The locations for which the *Consultant* provides a charge for the cost of support people and office overhead are

All UK offices

If Option C is used

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

share range

Consultant's share percentage

less than

N/A

%

N/A

%

from

% to

%

%

%

from

% to

%

%

%

greater than

%

%

%

%

If Option C or E is used

The *exchange rates* are those published in

Financial Times

on

01/06/2023

(date)

6 Compensation events

If there are additional

These are additional compensation events

N/A

8 Liabilities and insurance

If there are additional
Client's liabilities

These are additional *Client's liabilities*

(1) N/A

(2) N/A

(3) N/A

The minimum amount of cover and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE SERVICE OR TERMINATION
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service	£5 million in respect of each claim, without limit to the number of claims, save that cover shall apply in the aggregate in relation to pollution, contamination, asbestos, and fire safety notifications/cladding claims	6 years following Completion of the whole works or earlier termination
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service	Whichever is greater of £5 million or the amount required by law in respect of each event, without limit to the number of events	12 months
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	Whichever is greater of £5 million or the amount required by law in respect of each event, without limit to the number of events	For the period required by law

The *Consultant* provides these additional insurances

(1) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(2) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a
(3) Insurance against	n/a
Minimum amount of cover is	n/a
The deductibles are	n/a

The *Consultant's* total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters is limited to

£5 million

Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If the *tribunal* is arbitration

The *arbitration procedure* is

To be confirmed

The place where arbitration
is to be held is

To be confirmed

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

Institution of Civil Engineers

The *Senior Representatives* of the *Client* are

Name (1)

Client's Framework Manager

Address for communications

Environment Agency
Horizon House, Deanery Road
Bristol
BS1 4AH

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

Name

To be confirmed

Address for communications

To be confirmed

Address for electronic communications

To be confirmed

The *Adjudicator nominating body* is

Institution of Civil Engineers

X2: Changes in the law

If Option X2 is used

The law of the project is

The law of England and Wales, subject to the jurisdiction of the courts of England and Wales

X5: Sectional Completion (Not Used)

If Option X5 is used

The completion date for each section of the service is

section	description	completion date
(1)	N/A	N/A
(2)		
(3)		
(4)		

X7: Delay damages (Not Used)

If Option X7 is used without Option X5

Delay damages for Completion of the whole of the service are N/A per day

If Option X7 is used with Option X5

Delay damages for each section of the service are

section	description	amount per day
(1)	N/A	N/A
(2)		
(3)		
(4)		
The delay damages for the remainder of the service are		

X8: Undertakings to Others (Not Used)

If Option X8 is used

The undertakings to Others are provided to

N/A

X9: Transfer of Intellectual Property Rights

X10: Information modelling

If Option X10 is used

If no information execution plan is identified in part two of the Contract Data

The period after the Contract Date within which the Consultant is to submit a first Information Execution Plan for acceptance is

2 weeks

X11: Termination by the Client

X13: Performance bond (Not Used)

If Option X13 is used The amount of the performance bond is

X18: Limitation of liability

If Option X18 is used The *Consultant's* liability to the *Client* for indirect or consequential loss is limited to

The *Consultant's* liability to the *Client* for Defects that are not found until after the *defects date* is limited to

The *end of liability date* is years after the Completion of the whole of the service

X20: Key Performance Indicators (not used with Option X12)

If Option X20 is used The *incentive schedule* for Key Performance Indicators is in

A report of performance against each Key Performance Indicator is provided at intervals of months

Y(UK)1: Project Bank Account

Charges made and interest paid by the *project bank*

The *Consultant* is not 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

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

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

If Option Y(UK)3 is used

term

beneficiary

<input type="text" value="N/A"/>	<input type="text" value="N/A"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

If Y(UK)3 is used with

term

beneficiary

Y(UK)1 the following entry is added to the table for Y(UK)3

<input type="text" value="The provisions of Options Y(UK)1"/>	<input type="text" value="Named Suppliers"/>
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Z: Additional conditions of contract

The additional conditions of contract are:

Z1 Disputes:

Option W2 subclause W2.1(4) is deleted. The Parties agree that adjudication under Clause option W2 should only commence if the dispute resolution procedure has been exhausted and that the dispute resolution procedure in the Scope, takes precedence over Option W2.

Z2 Prevention

The text of clause 18 Prevention is deleted.

Delete the text of clause 60.1(12) and replace with:

The service is affected by any of the following events

- War, civil war, rebellion, revolution, insurrection, military or usurped power;
- Strikes, riots and civil commotion not confined to the employees of the *Consultant* and sub consultants,
- Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel,
- Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device,
- Natural disaster,
- Fire and explosion,
- Impact by aircraft or other aerial device or thing dropped from them.

Z3 Disallowed Costs

In second bullet of 11.2 (18) add:

(including compensation events with the Subcontractor, i.e. payment for work that should not have been undertaken).

Add the following additional bullets after 'and the cost of':

- Mistakes or delays caused by the Consultant's failure to follow standards in Scopes/quality plans.
- Re-organisation of the Consultant's project team.
- Additional costs or delays incurred due to Consultant's failure to comply with published and known guidance or document formats.
- Exceeding the Scope without prior instruction that leads to abortive cost
- Re-working of documents due to inadequate QA prior to submission, i.e. grammatical, factual arithmetical or design errors.
- Production or preparation of self-promotional material.
- Excessive charges for project management time on a commission for secondments or full-time appointments (greater than 5% of commission value)
- Any hours exceeding 8 per day unless with prior written agreement of the Service Manager
- Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the Service Manager
- Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the Service Manager
- Costs associated with the attendance at additional meetings after programmed Completion, if delay is due to *Consultant* performance.
- Costs associated with rectifications that are due to *Consultant* error or omission.
- Costs associated with the identification of opportunities to improve our processes and procedures for project delivery through the Consultant's involvement
- Was incurred due to a breach of safety requirements, or due additional work to comply with safety requirements
- Was incurred as a result of the Client issuing a Yellow or Red Card to prepare a Performance Improvement Plan

Z5 Secondments

Add clause 19

19.1 The *Client* will from starting date to Completion Date indemnify the *Consultant* against any and all liabilities, proceedings, costs, losses, claims and demands whatsoever arising directly or indirectly out of the activities of the *Consultant* in providing the services save where such claims, in the reasonable opinion of the *Client*, arise from or are contributed to by:

19.1.1 Misrepresentation or negligence by or on behalf of the *Consultant*;

or

19.1.2 The *Consultant* has acted contrary to the Service Manager's reasonable instructions or wholly outside the scope of the *Consultant's* duties as defined by the Service Manager.

Z8 Requirement for Invoice

Insert the following sentence at the end of clause 51.1:

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 Service Manager's certificate.

Delete existing clause 51.2 and insert the following:

51.2 Each certified payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

If a certified payment is late, or if a payment is late because the Service Manager 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.

Z9 Conflict of Interest

The *Consultant* immediately notifies the *Client* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* (including without limitation its reputation and standing) and/or the *Client* of which it is aware or which it anticipates may justify the *Client* taking action to protect its interests. Should the Parties be unable to remove the conflict of interest to the satisfaction of the *Client*, the *Client*, in its sole discretion, may terminate this Contract.

Z12 Waiver

No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party by the Service Manager in writing in accordance with the Contract, and with express reference to Clause Z12. The failure of either party to insist upon strict performance of the Contract, or any failure or delay in exercising any right or remedy shall not constitute a waiver or diminution of the obligations established by the Contract.

PART TWO – DATA PROVIDED BY THE CONSULTANT

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

1 General

The *Consultant* is

Name

McBains Ltd

Address for communications

Address for electronic communications

The *fee percentage* is

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

None

2 The *Consultant's* main responsibilities

If the *Consultant* is to
provide Scope

The Scope provided by the *Consultant* is in

N/A

5 Payment

If the *Consultant* states
expenses

The *expenses* stated by the *Consultant* are any

item

amount

item	amount
[Redacted]	

If Option A or C is used

If Option E is used

The forecast of the prices is

£165,797.10

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

[Redacted]

X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data

The *information execution plan* identified in the Contract Data is

TBC

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *project bank* is

N/A

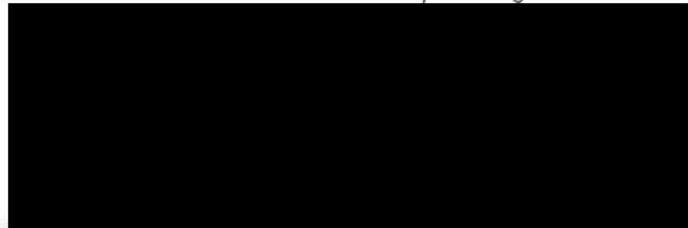
named suppliers are

N/A

Data for the Schedule of Cost Components (used only with Options C or E)

The *overhead percentages* for the cost of support people and office overhead are

location	overhead percentage
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Data for the Short Schedule of Cost Components (used only with Option A)

The *people rates* are

category of person

unit

rate

N/A

N/A

N/A