

# Engineering and Construction Contract

OPTION C: TARGET CONTRACT WITH ACTIVITY SCHEDULE

# **Contract Data Forms**

June 2017 (with amendments January 2023)

Template version history

V1 (as per bidder pack)	Go live template (this document)

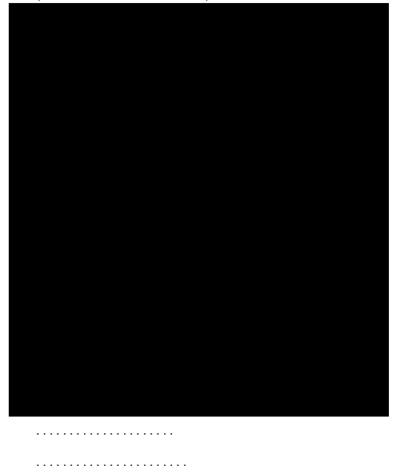
### **Contract Execution**

This agreement is made 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 Breheny Civil Engineering Ltd for Norfolk & Suffolk Recon Package of Works in Norfolk, also known as Package A2 (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.

The *Contractor* was appointed to the framework and executed the framework agreement (with reference number C19845).



(Named Suppliers)

## **Contract Data**

## PART ONE – DATA PROVIDED BY THE CLIENT

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, 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)

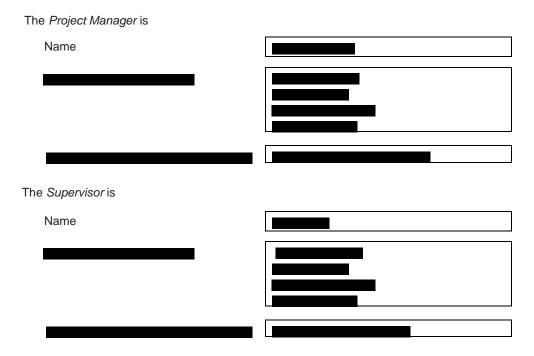
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Main Option	C Option for resolving and avoiding disputes W2			
Secondary OptionsX2 Changes in the Law X5 Sectional Completion X7 Delay Damages X9 Transfer of Rights X10 Information Modelling X11 Termination by the Client X15 The Contractor's design X16 Retention X18 Limitation of Liability Y(UK)1 Project Bank Account Y(UK)2: The Housing Grants, Construction and Rege Act 1996 Y(UK)3: The Contracts (Rights of Third Parties) Act Z: Additional conditions of contract				
The <i>works</i> are	<ul> <li>This package of works consists of 4No. sites (or smaller schemes) and a total of 11 assets spread across Norfolk, East Anglia region. It aims to undertake reconditioning works to bring the assets back to the recommended condition. It includes:</li> <li>Morston East Bank Cliffing Repair and Vermin Control &amp; Car Park Reach</li> <li>Carlton Beck Outfall Repairs</li> <li>C36 Breydon Water Crest Piling and Erosion Protection Repairs</li> </ul>			

Norwich Flood Defence Wall Refurbishment

The <i>Client</i> is	
Name	Environment Agency
Address for communications	



The Scope is in	AOMR Lot 1 ECC Scope - N&S Recon Package A2 (FINAL)		
The Site Information is in	ENV7006034R - N&S Recon Package A2 - Site Information		
The boundaries of the site are	<ul> <li>Breydon Water C36 - B550C064- JAC-DE-X36-DR-C-0001-S3- P01_Access and location plan</li> <li>Carlton Beck - Site Access and location plan</li> <li>Morston - FR03S047_SWS022- 22_300_001_A-Access Routes &amp; Hazards</li> <li>Norwich Wall - NFWD01</li> </ul>		
The language of the contract is	English		
The <i>law of the contract</i> is the law	w of the law of England and Wales, subject to the jurisdiction of the courts of England and Wales		
The period for reply is	1 week except that		
• The <i>period for reply</i> for	is		
• The period for reply for	is		
The following matters will be inclu	uded in the Early Warning Register		

N/A	
Early warning meetings are to be held at intervals no longer than	4 weeks

## 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	Э
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#### condition to be met key date N/A (1) (2) (3)

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

4 weeks

## 3 Time

3 Time			
	The starting date is		28/10/2024
	The access dates are as per scope.		
	The Contractor submits revised progr	ammes at intervals	Four (4) weaks
	no longer than		Four (4) weeks
If the <i>Client</i> has decided the <i>Completion Date</i> for the whole of the <i>works</i>	the Completion Date for the whole of the works is		27/03/2026
Taking over the <i>works</i> before the <i>Completion Date</i>	The Client is not willing to take over t Completion Date	the works before the	
If no programme is identified in part two of the Contract Data	The period after the Contract Date wi <i>Contractor</i> is to submit a first program		Two (2) weeks
4 Quality management			
	The period after the Contract Date wi <i>Contractor</i> is to submit a quality policy quality plan is		Two (2) weeks
	The period between Completion of th and the <i>defects date</i> is	e whole of the <i>works</i>	Fifty two (52) weeks
	The defect correction period is	2 weeks	except that
	The defect correction     period for		is
	• The defect correction period for		is
5 Payment			
	The currency of the contract is the	GBP Sterling	
	The assessment interval is	1 Month	
	The <i>interest rate</i> is 2.0	% per annum (not les	s than 2) above the
	Base rate (Bank Rate)	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

	The Contractor's share percentages and the share ranges are				
	share range			Contractor's share percent	tage
	less than	80	%	0	%
	from	80 % to 120	%	50	%
	from	% to	%		%
	greater than	120	%	100	%
	The exchange rates ar	e those published in (date)	Fina	ncial Times (ft.com)	
6 Compensation event	S				
	The place where weat	ner is to be recorded is	Holt; Ca Adventu	Walls – Norwich; Morston - rlton beck - Pettitts Animal re Park Reedham; C36 - Great Yarmouth	-
	The weather measurements to be recorded for each calendar month are				
	<ul> <li>the cumulative rainfa</li> </ul>	all (mm)			
	<ul> <li>the number of days with rainfall more than 5 mm</li> </ul>				
				than 0 degrees Celsius	
	<ul> <li>the number of days</li> </ul>		09:00	hours GMT	
	and these measurement			]	
	None				
	The weather measure	ments are supplied by	Met Office		
		•		ments for each calendar mo	onth
	which were recorded a	-			
	and which are available	e from	Met Office		

If there are additional compensation events

These are additional compensation events

None

#### 8 Liabilities and insurance

If there are additional *Client's* liabilities

These are additional Client's liabilities

Not Used

(3)

(1)	Not Used
(2)	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

£1,500,000

The minimum amount of cover for insurance against death of or bodily injury toemployees of the Contractor arising out of and in the course of their employment inconnection with the contract for any one event is£5,000,000 or the

£5,000,000 or the
minimum amount
required by law if that is
greater

 If the Client is to provide
 The insurance against loss of or damage to the works, Plant and Materials is to include

 Plant and Materials
 cover for Plant and Materials provided by the Client for an amount of

 Nil

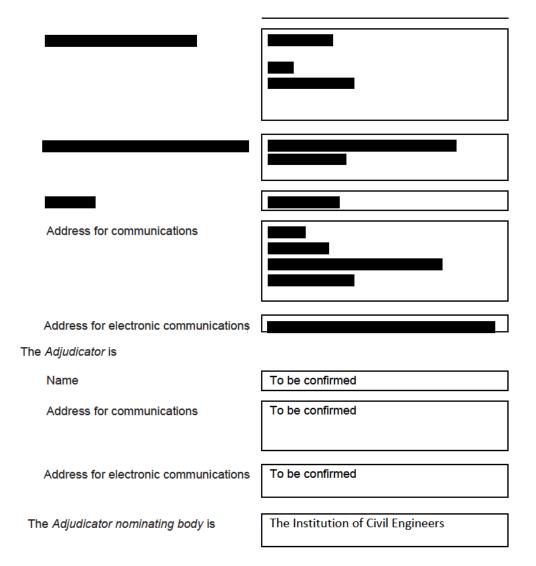
**Resolving and avoiding disputes** 

The *tribunal* is

Litigation in the courts

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

Name (1)



X5: Sectional Com	pletion		
If Option X5 is used	f Option X5 is used The Completion Date for each section of the works is		
	section	description	Completion Date
	(1)	Not used	
	(2)		
	(3)		
	(4)		

## X7: Delay damages

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

description

Not used

If Option X7 is used with Option X5

Delay damages for each section of the works are

section

(1)

(2)

(3)

(4)

amount per day

X10: Information modelling

If Option X10 is used			
If no information execution	The period after the Contract Date within which the Contractor is to submit a		
<i>plan</i> is identified in part two of the Contract Data	first Information Execution Plan for acceptance is	2 weeks	
	The minimum amount of insurance cover for claims made against the <i>Contracto</i> out of its failure to use the skill and care normally used by professionals providin information similar to the Project Information is, in respect of each claim		
		[add] value of contract	
The period following Completion of the whole of the <i>works</i> or earlier termi which the <i>Contractor</i> maintains insurance for claims made against it arisir			
	failure to use the skill and care is	Six (6) years	

The delay damages for the remainder of the works are

X15: The Contractor's	design	
If Option X15 is used	The <i>period for retention</i> following Completion of the whole of the <i>works</i> or earlier termination is	
	The minimum amount of insurance cover for claims made against the Contractor arisingout of its failure to use the skill and care normally used by professionals designingworks similar to the works is, in respect of each claim50% of Contract value	
	The period following Completion of the whole of the <i>works</i> or earlier termination for which the <i>Contractor</i> maintains insurance for claims made against it arising out of its	
	failure to use the skill and care is	
X16: Retention		
If Option X16 is used	The <i>retention free</i> amount is <b>not used</b>	
	The retention percentage is not used	%
Retention bond	The Contractor may/may not give the Client a retention bonc	l (Delete as applicable)
X18: Limitation of liabi	lity	
If Option X18 is used	The <i>Contractor's</i> liability to the <i>Client</i> for indirect or consequential loss is limited to	1.2 times the Contract Price
	For any one event, the Contractor's liability to the Client for	
	loss of or damage to the <i>Client's</i> property is limited to 50% value of the Contract	
	The Contractor's liability for Defects due to its design which	
	are not listed on the Defects Certificate is limited to	50% value of the Contract
	The <i>Contractor's</i> total liability to the <i>Client</i> for all matters arising under or in connection with the contract, other than	
	excluded matters, is limited to	Contract Price
	The <i>end of liability date</i> is Six (6) years after the Comple	etion of the whole of the works

#### Y(UK)1: Project Bank Account

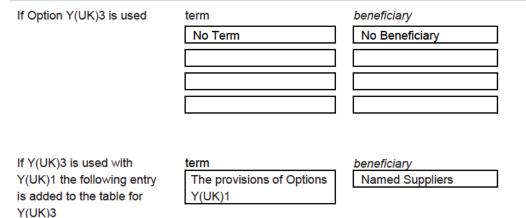
Charges made and interest<br/>paid by the project bankThe Contractor is to pay any charges made and to be paid any interest paid by<br/>the project bank (Delete as applicable)

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

If Option Y(UK)2 is used and The period for payment is 21 days after the date on which payment becomes

the final date for payment is due not fourteen days after the date on which payment becomes due

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



#### 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* 

#### Z 2A: Risk transfer: Physical conditions within the Site

Clause 60.1 (12) is deleted from this contract.

#### Z 2B: Water levels: Contractor's risk

Clause 60.1 (12) second bullet point is amended to: "are not weather conditions or floods and"

#### 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 4 Schedule of Cost Components and Prices (Option C and E)

Z4.1 Where a rate is included in the Framework Pricing Schedule, the Defined Cost is the rate in the Activity Schedule which should be used in assessing the Price for Work Done to Date.

Z4.2 Where there is no rate in the Framework Pricing Schedule the Schedule of Cost Components in the NEC4 ECC should be used.

#### 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 be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these timescales then the *Client* reserves the right to delay payments to the *Contractor* in respect of subcontracted work, services or goods.

Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the *Contractor's* opportunities to work on framework contracts.

#### Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999

Z11.1 The *Contractor* warrants all design complies with the contract whether undertaken by the *Contractor* or by sub-contractors.

Z11.2 All contracts for design employed by the Contractor must include:

- Y(UK)3 The Contracts Rights of Third Parties) Act 1999
- A requirement for the *Contractor's* sub-contractor to hold Professional indemnity insurance to the same level as the cover specified for the *Contractor* in this Call-off contract

• A clause to give the *Client* (the Environment Agency) the right to enforce the provisions of the Contracts (Right of Third Parties) Act 1999,

• A clause to ensure that neither the *Contractor* nor their sub-contractor can alter the provisions of their sub-contract without the consent of the *Client* 

• A clause to ensure that the *Client's* rights against the sub-contractor under this agreement shall be subject to the same conditions, limitations and exclusions as apply to the *Contractor's* rights against the design consultant under this agreement

• 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.

#### Z16 Disallowed Costs

Add the following bullets to clause 11.2 (26) Disallowed costs.

- was incurred due to a breach of safety requirements, or due to 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.
- was incurred as a result of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit.

#### Z19 Linked contracts

Delays and additional cost on this contract resulting from the *Contractor's* fault or error on a previous contract on this project or programme will be a Disallowable cost under this contract and not be a Compensation event under this contract.

#### Z20 Defect Dates for Sections

Where a section of the *works* is defined and is located in a separate area of the Site, the time to the *defects date* for that section is the defined period after the Completion of that section , and is defined in the Contract Data.

#### Z21 Requirement for Invoice

Add the following sentence to 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 *Project Manager's* certificate. Delete existing clause 51.2:

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 *Project 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

#### Z22 Resolving Disputes

Delete W2.1

#### Z23 Risks and insurance

Replace clause 84.1 with the following

Insurance certificates are to be submitted to the *Client* on an annual basis.

Z31 ECC – Price Adjustment for Inflation

The Client recognises the ongoing pricing uncertainty with regards to inflation. The Client will mitigate

### this uncertainty through this clause. Z31.1 Defined terms: a) The index is Office for National Statistics (ONS) Construction Output Price Indices (OPIs) New work output prices: Infrastructure Index 1 - month rate. b) The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date. c) The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due. d) The Price Adjustment Factor (PAF) at each date of assessment of an amount due is 0.9((L-B)/B). Z31.2 Application rules. The provisions of this clause [Z31] shall apply provided that: a) The Price for Work Done to Date is less than or equal to the total of the Prices and b) Inflation remains positive i.e. L is greater than B. Z31.3 Price Adjustment Factor. If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the Completion Date for the whole of the works is used for calculating an amount for price adjustment after that date. Z31.4 Price adjustment Options A and B. NOT USED Z31.5 Price adjustment Options C and D. Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by (PAF/(1+PAF)). Z31.6 Compensation events. NOT USED Z111 ECC - Fee adjustment for non compliance with Scope

Delete existing 11.2 (10) and replace with the following clause

The Fee is the amount calculated by applying the fee percentage to the Defined Cost excluding the cost of Sub-contractors that have not complied with procurement by best value processes as defined in the Scope. 80% of the fee percentage is applied to the amount of the Defined Cost for Sub-contractors that have not complied with procurement by best value processes as defined in the Scope.

## 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 C	Contractor is	
	Name	Breheny Civil Engineering Ltd
	Address for communications	
The	fee percentage is	15 %
The	working areas are	The Sites, Breheny offices, storage areas/compounds and off-site manufacturing and fabrication yards.
The	key persons are	
	Name (1)	
	Job	Senior Project Manager
	Responsibilities	Project Management and organisation of resources
	Qualifications	See CV (Available on request)
	Experience	See CV
	Name (2)	
	Job	Commercial Manager
	Responsibilities	Commercial overview and management of project.
	Qualifications	See CV (Available on request)
	Experience	See CV (Available on request)
	Name (3)	
	Job	AOMR Framework Manager
	Responsibilities	Framework Co-ordination
	Qualifications	See CV (Available on request)
	Experience	See CV (Available on request)
	Name (4)	
	Job	Area Framework Manager

Responsibilities

Area project organisation and management.

Qualifications

Experience

See CV (Available on request)

See CV (Available on request)

The following matters will be included in the Early Warning Register

2 The Contractor's main responsibilities			
If the <i>Contractor</i> is to provide Scope for its design	The Scope provided by the Contractor for	its design is in	N/A
3 Time			
If a programme is to be identified in the Contract Data	The programme identified in the Contract	Data is	05581(A2)-RP-T001
If the <i>Contractor</i> is to decide the <i>Completion Date</i> for the whole of the <i>works</i>	The Completion Date for the whole of the	works is	26/03/2026
5 Payment			
	The activity schedule is		05581(A2)-SMH-T001
	The tendered total of the Prices is		£719,593.43
Resolving and avoidin	g disputes		
If Option W1 or W2 is used	The Senior Representatives of the Contract	tor are	
	Name (1)		
	Address for communications		
	Address for electronic		
	Address for communications		
	Address for electronic		
X10: Information mode	lling		
If Option X10 is used			
If an <i>information execution</i> <i>plan</i> is to be identified in the Contract Data	The <i>information execution plan</i> identified in the Contract Data is	N/A	
Y(UK)1: Project Bank A	Account		
If Option Y(UK)1 is used	The <i>project bank</i> is		
	N/A		

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
14T Excavator	£30.41	Hour
21T Excavator	£42.28	Hour
6T Tracked Dumper	£33.60	Hour
9t Tracked Dumper	£67.61	Hour

Hour	
Hour	
Hour	
Hour	

Other equipment utilised to be charged at open market rates.

The rates for special Equipment are

Equipment	rate
30t long reach excavator	£77.89/hr

Other special equipment utilised to be charged at open market rates.

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

category of person	rate
Welder	£55.00/hr

Other rates for Defined Cost of manufacture and fabrication outside the Working Areas are to be charged at open market rates.

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

category of person	rate
Design Manager	£94.08/hr
Design Engineer	£79.02/hr
Graduate designer/engineer	£63.82
CAD Technician	£39.51

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

All design people.