



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)

Main Option

C

Option for resolving and avoiding disputes

W2

Secondary Options

X2 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 Regeneration Act 1996
Y(UK)3: The Contracts (Rights of Third Parties) Act 1999
Z: Additional conditions of contract

The *works* are

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:

- Morston East Bank Cliffling Repair and Vermin Control & Car Park Reach
- Carlton Beck Outfall Repairs
- C36 Breydon Water Crest Piling and Erosion Protection Repairs
- Norwich Flood Defence Wall Refurbishment

The *Client* is

Name

Environment Agency

Address for communications

██████████
██████████
██████ ████████

██

██
████████████████████

The *Project Manager* is

Name	<div></div>
<div></div>	<div><div></div><div></div><div></div><div></div></div>
<div></div>	<div></div>

The *Supervisor* is

Name	<div></div>
<div></div>	<div><div></div><div></div><div></div><div></div></div>
<div></div>	<div></div>

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 <i>boundaries of the site</i> are	<ul style="list-style-type: none"> Breydon Water C36 - B550C064-JAC-DE-X36-DR-C-0001-S3-P01_Access and location plan Carlton Beck - Site Access and location plan Morston - FR03S047_SWS022-22_300_001_A-Access Routes & Hazards Norwich Wall - NFWD01 		
The <i>language of the contract</i> is	English		
The <i>law of the contract</i> is the law of	the law of England and Wales, subject to the jurisdiction of the courts of England and Wales		
The <i>period for reply</i> is	1 week	except that	
• The <i>period for reply</i> for		is	
• The <i>period for reply</i> for		is	
The following matters will be included in the Early Warning Register			
<div style="border: 1px solid black; padding: 5px;"> N/A </div>			
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

	<i>condition</i> to be met	<i>key date</i>
(1)	N/A	
(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

The *starting date* is

28/10/2024

The *access dates* are as per scope.

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

Four (4) weeks

If the *Client* has decided the *Completion Date* for the whole of the *works*

the *Completion Date* for the whole of the *works* is

27/03/2026

Taking over the *works* before the *Completion Date*

The *Client* **is not** willing to take over the *works* before the *Completion Date*

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

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

Two (2) weeks

4 Quality management

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

Two (2) weeks

The period between Completion of the whole of the *works* and the *defects date* is

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 *interest rate* is

2.0

% per annum (not less 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 *Client* will make payment within 14 days of the date of the invoice.

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

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

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

Norwich Walls – Norwich; Morston – Holt; Carlton beck - Pettitts Animal Adventure Park Reedham; C36 Breydon - Great Yarmouth

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

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

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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

- | | |
|-----|----------|
| (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

£1,500,000

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

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

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)

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Address for communications

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Address for electronic communications

[Redacted]

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

The Institution of Civil Engineers

X5: Sectional Completion

If Option X5 is used

The *Completion Date* for each *section* of the *works* is

<i>section</i>	<i>description</i>	<i>Completion Date</i>
(1)	Not used	
(2)		
(3)		
(4)		

X7: Delay damages

If Option X7 is used without
Option X5

Delay damages for Completion of the whole of the *works* are

444.41 per day

If Option X7 is used with
Option X5

Delay damages for each *section* of the *works* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
(1)	Not used	
(2)		
(3)		
(4)		
The delay damages for the remainder of the <i>works</i> are		

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 *Contractor* is to submit a first Information Execution Plan for acceptance is

2 weeks

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals providing 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 *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

Six (6) years

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	Six (6) years
	The minimum amount of insurance cover for claims made against the <i>Contractor</i> arising out of its failure to use the skill and care normally used by professionals designing works similar to the <i>works</i> is, in respect of each claim	50% 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	Six (6) years

X16: Retention

If Option X16 is used	The <i>retention free</i> amount is	not used
	The <i>retention percentage</i> is	not used %
Retention bond	The <i>Contractor</i> <u>may/may not</u> give the <i>Client</i> a retention bond (Delete as applicable)	

X18: Limitation of liability

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 <i>Contractor's</i> liability to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to	50% value of the Contract
	The <i>Contractor's</i> 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 Completion of the whole of the <i>works</i>

Y(UK)1: Project Bank Account

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

If Option Y(UK)3 is used

term

beneficiary

No Term

No Beneficiary

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

term

beneficiary

The provisions of Options
Y(UK)1

Named Suppliers

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
<p>Subcontractors</p> <p>The <i>Contractor</i> will use the NEC4 contract on all subcontracts for <i>works</i> 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.</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>
Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999
<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"> • Y(UK)3 The Contracts Rights of Third Parties) Act 1999 • A requirement for the <i>Contractor's</i> sub-contractor to hold Professional indemnity insurance to the same level as the cover specified for the <i>Contractor</i> in this Call-off contract • 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, • 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> • 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 • 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
<p>Add the following bullets to clause 11.2 (26) Disallowed costs.</p> <ul style="list-style-type: none"> • 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 <i>Client</i> 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
<p>Delays and additional cost on this contract resulting from the <i>Contractor's</i> 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.</p>
Z20 Defect Dates for Sections
<p>Where a section of the <i>works</i> is defined and is located in a separate area of the Site, the time to the <i>defects date</i> for that section is the defined period after the Completion of that section , and is defined in the Contract Data.</p>
Z21 Requirement for Invoice
<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"> • 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. <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>
Z22 Resolving Disputes
Delete W2.1
Z23 Risks and insurance
<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>
Z31 ECC – Price Adjustment for Inflation
<p>The <i>Client</i> recognises the ongoing pricing uncertainty with regards to inflation. The <i>Client</i> will mitigate</p>

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 *Contractor* is

Name

Breheny Civil Engineering Ltd

Address for communications

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

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)

[REDACTED]

Job

Senior Project Manager

Responsibilities

Project Management and organisation of resources

Qualifications

See CV (Available on request)

Experience

See CV

Name (2)

[REDACTED]

Job

Commercial Manager

Responsibilities

Commercial overview and management of project.

Qualifications

See CV (Available on request)

Experience

See CV (Available on request)

Name (3)

[REDACTED]

Job

AOMR Framework Manager

Responsibilities

Framework Co-ordination

Qualifications

See CV (Available on request)

Experience

See CV (Available on request)

Name (4)

[REDACTED]

Job

Area Framework Manager

Responsibilities

Area project organisation and management.

Qualifications

See CV (Available on request)

Experience

See CV (Available on request)

The following matters will be included in the Early Warning Register

--

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

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 Contractor is to decide the Completion Date for the whole of the works 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 avoiding disputes

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

Name (1)

Address for communications

Address for electronic

Address for communications

Address for electronic

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

N/A

Y(UK)1: Project Bank Account

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

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.