



# Engineering and Construction Contract

OPTION E: COST REIMBURSABLE CONTRACT

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## Contract Data Forms

June 2017

(with amendments January 2019)

## 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 J.T. Mackley & Co. Ltd for Southeast Beach Maintenance Contract (the *works*).

The *Contractor* offers to Provide the Works 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 RM6088).

Executed under hand

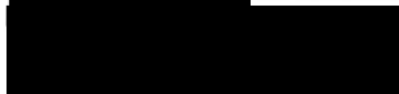
by



..... (Client)



..... (Contractor)



.....

.....

.....

(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 E, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019)

Option for resolving and avoiding disputes

W2

Secondary Options

X2 Changes in law  
X9 Transfer of rights  
X10 Information Modelling  
X11 Termination by the *Client*  
X16 Retention  
X18 Limitation of Liability  
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

Southeast Beach Maintenance Contract

The *Client* is

Name

Environment Agency

Address for communications

Environment Agency  
Horizon House  
Deanery Road  
Bristol  
BS1 5AH

Address for electronic communications

The *Project Manager* is

Name

Address for communications

Arcadis Consulting (UK) Ltd  
Floor 5, 80 Fenchurch Street  
London  
EC3M 4BY

Address for electronic communications

The *Supervisor* is

Name

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Address for communications

Environment Agency Guildbourne House, Chatsworth Road Worthing West Sussex BN11 1LD
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Address for electronic communications

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The Scope is in

CCS Southeast Beach Maintenance Contract Scope v3  
FINAL

The Site Information is in

Seaford Beach Shingle Recycling PCI - 2024\_2025 -  
Draft v1

The boundaries of the site are

The project is located at:  
Seaford Beach,  
Seaford,  
East Sussex.  
Grid Ref: TQ 462,000 to TV 487,982  
  
001 Site Information Map within Seaford  
Beach Recycling PCI

The language of the contract is

English

The law of the contract is the law of

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

The period for reply is

2 weeks

except that

The period for reply for

is

The period for reply for

is

The following matters will be included in the Early Warning Register

This contract is based on shingle recycling at Seaford frontage. Any additional  
frontages requiring ad hoc recycling (e.g. Shoreham and Lancing) will be added via  
compensation events once the details are known.  
Extensions or decreases in the time required to complete either or both of Phases 1  
and 2.  
Urgent / emergency works.  
Extension of contract into second year.

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

2 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

	condition to be met	Key date
(1)		
(2)		
(3)		

The Contractor prepares forecasts of the total Defined Cost for

the whole of the works at intervals no longer than

2 weeks

### 3 Time

The starting date is

23 September 2024

The access dates are

part of the Site

date

(1) FastDraft

23 September 2024

(2) Sharepoint

23 September 2024

(3) Asite

23 September 2024

(4) Sites

To be agreed with the Client

The Contractor submits revised programmes at intervals no longer than

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

22 September 2025

Taking over the works before the Completion Date

The Client is not willing to take over the works before the Completion Date (Delete as applicable)

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

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

2 weeks

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

0 weeks

The defect correction period is

1 week

except that

• The defect correction period for

A safety issue for the public

is

24 hours

• The defect correction period for

is

### 5 Payment

The currency of the contract is the

£ Sterling

The assessment interval is

Monthly

The interest rate is

2

% 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.

The *exchange rates* are those published in

on (date)

## 6 Compensation events

The place where weather is to be recorded is

Eastbourne

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:

Not Applicable

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

N/A

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

N/A

If there are additional compensation events

These are additional compensation events

If the price of white diesel exceeds £1.6 per litre (inclusive of VAT), the excess will be a compensation event.  
If the price of HVO exceeds £1.85 per litre (inclusive of VAT), the excess will be a compensation event.

## 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

£5,000,000

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

£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

If the *Client* is to provide any of the insurances stated in

The *Client* provides these insurances from the Insurance Table

the Insurance Table

(1) Insurance against

Minimum amount of cover is

The deductibles are

**(2) Insurance against**

**Minimum amount of cover is**

**The deductibles are**

**(3) Insurance against**

**Minimum amount of cover is**

**The deductibles are**

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

The *Contractor* provides these additional insurances

(1) Insurance against	Contractor's all risk – loss or damage to the works, plant and material including cover for plant and materials provided by the Client.
Minimum amount of cover is	1.2 times the total of the Prices
The deductibles are	
(2) Insurance against	Professional indemnity
Minimum amount of cover is	£2,000,000.00
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

If additional insurances  
are to be provided

The *Client* provides these additional insurances

## Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If the *tribunal* is arbitration

The *arbitration procedure* is

The place where arbitration is to be held is

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

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

Name (1)

Address for communications

Address for electronic communications

Environment Agency  
Horizon House, Deanery Road  
Bristol  
BS1 5AH

enquiries@environment-agency.gov.uk

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

Name

Address for communications

Address for electronic communications

To be confirmed

To be confirmed

To be confirmed

The *Adjudicator nominating body* is

The Institution of Civil Engineers

### X5: Sectional Completion NOT USED FOR THIS CONTRACT

If Option X5 is used

The *completion date* for each *section* of the *works* is

section	description	completion date
(1)		
(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  per day

If Option X7 is used with  
Option X5

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

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

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

### X16: Retention

If Option X16 is used

The *retention free* amount is

The *retention percentage* is

%

Retention bond

The *Contractor* may not give the *Client* a retention bond (Delete as applicable)

### X18: Limitation of liability

If Option X18 is used

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to

£1,000,000

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to

£800,000

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to

£800,000

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

£1,600,000

The *end of liability date* is 6 years after the Completion of the whole of the works

### Y(UK)1: Project Bank Account NOT USED FOR THIS CONTRACT

Charges made and interest paid by the *project bank*

The *Contractor* **is not to pay** any charges made and to be paid any interest paid by 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 final date for payment is not fourteen days after the date on which payment becomes due

The Period for payment is 14 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


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.

### **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*."

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

The *Contractor* will use the NEC4 contract on all subcontracts for works. Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these time scales then the *Client* reserves the right to delay payments to the *Contractor* in respect of subcontracted work, services and supplies.

### **Z11 Transfer of Rights under Y(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 (Rights 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.

### **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.

#### **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

JT Mackley & Co Ltd

Address for communications

Bankside House  
Henfield Road  
Small Dole  
West Sussex BN5 9XQ

Address for electronic communications

[REDACTED]

The fee percentage is

[REDACTED] %

The working areas are

Site, Mackley and Ovenden  
premises

The key persons are

Name (1)

[REDACTED]

Job

Contract Manager

Responsibilities

Scope delivery, SHEW  
performance, provision of adequate  
resources

Qualification

[REDACTED]

Experience

[REDACTED]

Name (2)

[REDACTED]

Job

Site Manager

Responsibilities

Site supervision, SHEW  
Performance, project management

Qualifications

[REDACTED]

Experience

[REDACTED]

The following matters will be included in the Early Warning Register

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## 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

### Resolving and avoiding disputes

If Option W1 or W2 is used

The Senior Representatives of the Contractor are

Name (1)

Address for communications

Bankside House  
Henfield Road  
Small Dole  
West Sussex BN5 9XQ

Address for electronic communications

Name (2)

Address for communications

Bankside House  
Henfield Road  
Small Dole  
West Sussex BN5 9XQ

Address for electronic communications

### 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

The rates for special Equipment are

Equipment	rate

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

ALL
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