



Engineering and Construction Contract

OPTION A: PRICED CONTRACT WITH ACTIVITY SCHEDULE

Contract Data Forms

June 2017

(with amendments January 2019)

Rivermede Embankment
ACUA Ref: [REDACTED]

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 for (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

.....

.....

.....

.....

.....

(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 A, 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
X10 Information Modelling
X11 Termination by the Client
X15 the *Contractor's* design
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

To design and build a long term, cost effective solution to the erosion of the embankment and install measures that will alleviate the seepage through the embankment into the residents gardens.

The *Client* is

Name

[REDACTED]

Address for communications

[REDACTED]

Address for electronic communications

[REDACTED]

The *Project Manager* is

Name

[REDACTED]

Address for communications

Richard Fairclough House
Knutsford Road
Warrington
Cheshire
WA4 1HG

Address for electronic communications

[REDACTED]

The *Supervisor* is

Name

[REDACTED]

Address for communications

Address for electronic communications

The Scope is in

The Site Information is in

The boundaries of the site are

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

- Third-party interface – Consultation needed with landowners and residents due to works being carried out within residents gardens.
- Application for Flood Risk Activity Permit (FRAP)
- Marine Management Organisation – Project team is to seek an exemption during application of the FRAP.
- Invasive Species – Japanese Knotweed and Himalayan Balsam found on site within the work area.
- Consent for the works needed from Natural England.
- Working window constraints May to September – migrating fish interface.

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

condition to be met

key date

(1)	<input type="text"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>

3 Time

The *starting date* is

The *access dates* are

	part of the Site	date
(1)	<input type="text" value="Rivermede Embankment site area"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>

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

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

The *completion date* for the whole of the *works* is

Taking over the *works* before the Completion Date

The *Client* **is** 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

4 Quality management

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

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

The *defect correction period* is except that

- The *defect correction period* for is
- The *defect correction period* for is

5 Payment

The *currency of the contract* is the

The *assessment interval* is

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

rate of the 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 <i>Client</i> will make payment within 14 days of the date of the invoice.
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6 Compensation events

The place where weather is to be recorded is

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 hours GMT

and these measurements:

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

Hagg Lane, Preston PR3 0UJ

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

The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is

%

If there are additional
compensation events

These are additional compensation events

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 of 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 Insurance Table

The *Client* provides these insurances from 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	

If additional insurances
are to be provided

The *Client* provides these additional insurances

(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	
Minimum amount of cover is	
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	

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

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

Name

Address for communications

Address for electronic communications

The *Adjudicator nominating body* is

The Institution of Civil Engineers

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

£2,000,000

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

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	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	£5m
	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	6 years

X16: Retention

If Option X16 is used	The <i>retention free</i> amount is	0 of the total of the Prices
	The <i>retention percentage</i> is	5 %

Retention bond The *Contractor* may not give the *Client* a retention bond

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	£1,000,000
	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	£5,000,000
	The <i>Contractor's</i> liability for Defects due to its design which are not listed on the Defects Certificate is limited to	£2,000,000
	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	£5,000,000
	The <i>end of liability date</i> is	6 years after the Completion of the whole of the <i>works</i>

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

If Option Y(UK)3 is used	term	beneficiary
	<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 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..."

Z10 Payments to subcontractors, sub consultants and Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works in excess of £25,000.00. Payment to subcontractors will be a maximum of 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 (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 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

A E Yates Limited

Address for communications

Address for electronic communications

The *fee percentage* is

%

The *working areas* are

Site and remote site compound

The *key persons* are

Name (1)

Job

Responsibilities

See Question 2 - Key Staff CVs

Qualifications

See Question 2 - Key Staff CVs

Experience

See Question 2 - Key Staff CVs

Name (2)

Job

Responsibilities

See Question 2 - Key Staff CVs

Qualifications

See Question 2 - Key Staff CVs

Experience

See Question 2 - Key Staff CVs

The following matters will be included in the Early Warning Register

n/a

2 The Contractor's main responsibilities

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

3 Time

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

[Appendix A - 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

5 Payment

The *activity schedule* is

The tendered total of the Prices is

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

If Option W3 is used and the number of members of the Dispute Avoidance Board is three

The *Contractor's* nomination for the Dispute Avoidance Board is

Name

Address for communications

Address for electronic communications

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *project bank* is

named suppliers are

Data for the Short Schedule of Cost Components

The *people rates* are

category of person

unit

rate

See attached NEC4 - CD Part 2 - Standard Data - September 2023		

The published list of Equipment is the edition current at
the Contract Date of the list published by

The percentage for adjustment for Equipment in the
published list is

 % (state plus or
minus)

The rates for other Equipment are

Equipment

rate

n/a	

