



# Term Service Contract

OPTION A: PRICED CONTRACT WITH ACTIVITY SCHEDULE

## Contract Data Forms

June 2017

(with amendments January 2023)

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 Asset Operation, Maintenance, Response (AOMR) Framework, NEC4 Term Service Contract for Incident Response (the *services*).

The *Contractor* offers to Provide the Service 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 Asset Operation, Maintenance, Response framework and executed the framework agreement.

**Executed under hand** . . . . .

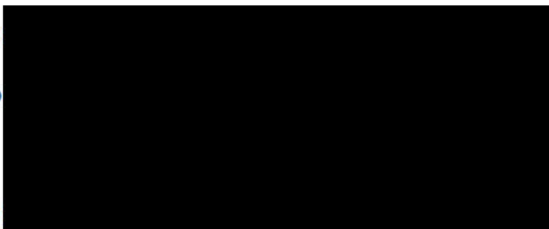
by

The Environment Agency (*Client*)

Name:

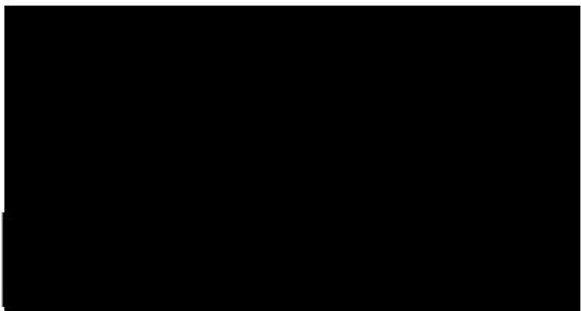
Position:

Signature:



Date: 01/11/2024

Breheny Civil Engineering Ltd (*Contractor*)



Date: 24/10/2024

# 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 and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Term Service Contract June 2017 (with amendments January 2023)

Main Options

A

Option for resolving and avoiding disputes

W2

Secondary Options

X2 – Changes in law

X11- Termination by the *Client*

X17 – Low Service Damages

X18 – Limitation of Liability

X23 – Extending the Service Period

X24 – The Accounting Periods

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

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

Z Additional Client Clauses

The *service* is

Asset OMR Incident Response in Essex, Norfolk and Suffolk as defined in the Scope (Appendix 1)

The *Client* is

Name

Environment Agency

Address for communications

Address for electronic communications

The *Service Manager* is

Name

Address for communications

Address for electronic communications

The Affected Property is

Assets set out in Appendix 1 - AOMR Lot 1 TSC Scope – BCE Ltd - Incident Response and assets set out in future Task Orders/Scopes/Work Schedules for the Essex, Norfolk and Suffolk area.

The Scope is in

Appendix 1 - AOMR Lot 1 TSC Scope – BCE Ltd - Incident Response V1.0

The *shared services* which may be carried out outside the Service Areas 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 following matters will be included in the Early Warning Register

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

4 weeks

## 2 The *Contractor's* main responsibilities

If Option C or E is used

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

## 3 Time

The *starting date* is

1<sup>st</sup> November 2024

The *service period* is

5 months

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

4 weeks

The period within which the *Contractor* is to submit a Task Order programme for acceptance is

4 weeks

If no 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 plan 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

#### 5 Payment

The *currency of the contract* is the

GBP Sterling

The *assessment interval* is

1 month

The *interest rate* is

2 (two)

% 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

The *Client* will make payment within 14 days of the date of the invoice.

#### 6 Compensation events

If Option A is used

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

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## 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 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 Service 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 Plant and Materials and Equipment is to include cover for Plant and Materials provided by the *Client* for an amount of

Nil

The *Contractor* provides these additional insurances

- |                            |                                       |
|----------------------------|---------------------------------------|
| (1) Insurance against      | Contractors All Risk Insurance        |
| Minimum amount of cover is | 120% of the value of this contract    |
| The deductibles are        | The excess up to a maximum of £25,000 |
| (2) Insurance against      | Professional Indemnity                |
| Minimum amount of cover is | £2,000,000                            |
| The deductibles are        | The excess up to a maximum of £25,000 |
| (3) Insurance against      |                                       |
| Minimum amount of cover is |                                       |
| The deductibles are        |                                       |

## 9 Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts

If the *tribunal* is arbitration

The *arbitration procedure* is

TBC

The place where arbitration  
s to be held is

TBC

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

[REDACTED]

The *Senior Representatives* of the *Client* are

Name (1)

Address for communications

Address for electronic communication

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

## X17: Low service damages

If Option X17 is used

Service Credits will be used to maintain service delivery through the contract, based on the Key Performance Indicators set out below (monitored and recorded on a quarterly basis).

The Service Credits approach is set out below:

- Contractors are required to score **at least 80%** per quarter. If they achieve a score below this, they are required to submit a Performance Improvement Plan to the Service Manager to set out how they will improve their performance to the required levels.
- If a Contractor **scores below 70%**, service credits would apply on a sliding scale basis as seen below (the below numbers have been used as an example and will be calculated based on a quarterly price from the returned pricing schedule):

KPI Score	Percentage retained	Amount retained per quarter (based on £4,134 weekly fee; £53,742/quarter)	Equivalent amount retained per week
66-70	30	£16,122.60	£1,240.20
61-65	40	£21,496.80	£1,653.60
51-60	50	£26,871	£2,067
45-50	75	£40,306.50	£3,100.50
Below 45	100	£53,742	£4,134

- If in the **following quarter** the Contractor then scores **above 80**, any retained credits from the previous quarter would be repaid (this relates to the previous quarter only and not any previous quarters).
- Alternatively, if in the **following quarter** the Contractor **scores between 70 and 80**, half of the retained credits from the previous quarter only would be repaid. The other half of the retained credits are permanently lost.
- OR if the Contractor does not reach a score of 80 in the following quarter, all previous retained credits are permanently lost.

Examples are shown in the following table:



EXAMPLE: OUTCOMES BASED ON KPI's	SUPPLIER KPI SCORE FOR QUARTER					ACTION TAKEN
	Quarter 1	Q2	Q3	Q4	Q5	
Contractor KPI score above 80	82					No action taken
A score of <b>less than 80</b> in any quarter requires the Contractor to provide an Improvement Plan		76				Contractor must provide an Improvement Plan
A score of <b>less than 70</b> in any quarter results in service credits applying: every percentage below 70 results in the same reduction in % payments of the quarterly invoice amount (to a capped maximum reduction of 100% of management fee)			66			EA retains 30% of the management fee from the quarterly invoiced totals  Contractor must provide an Improvement Plan
If following a Service Credit quarter, the Contractor KPI score <b>exceeds 80 in the following quarter</b> , any retained service credits from the previous quarter would be repaid				81		Service Credits from previous quarter (30% of management fee) are paid (along with regular quarterly payment).
OR If following a Service Credit quarter, in the next quarter the Contractor KPI score <b>achieves a score of 70 but fails to achieve a score of 80</b> , half of the service credits retained in the previous quarter are paid; half are permanently lost.  The Contractor is required to provide an Improvement Plan				72		Half of the previously retained 30% is repaid (15% along with regular quarterly payment), (15% of previous quarters management fee) is permanently retained.  Contractor must provide an Improvement Plan
OR If following a Service Credit quarter, in the next quarter the Contractor KPI score <b>again fails to achieve a score of 70</b> , the same % is deducted from the quarterly invoice amount (to a capped maximum reduction of 100%)				50		EA retains 75% of management fee from the quarterly invoiced totals AND the previously retained 30% of management fee is permanently retained.  Contractor must provide an Improvement Plan

If following two Service Credit quarters, the Contractor KPI score <b>exceeds 80 in the following quarter</b> , any retained service credits from the <b>previous quarter only</b> would be repaid					81	Service Credits from previous quarter (100% of management fee) are paid, along with regular quarterly payment. Note that any previously retained Service Credits are not repaid.
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### 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 of an item of Equipment is limited to	£1,000,000
	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	The greater of £5m or the total of the Prices plus 20%
	The <i>end of liability date</i> is	6 years after the end of the Service Period

### X 23

If Option X23 is used	The maximum service period is	2	Years after the starting date
	The <i>periods</i> for extension are		
Order	<i>Period for extension (months)</i>		<i>notice date</i>
First	6 months		31 <sup>st</sup> March 2025
Second	12 months		30 <sup>th</sup> September 2025
Third			
Fourth			

If there are *criteria for extension*  
The *criteria for extension* are

- (1)
- (2)
- (3)

#### X24: The *accounting periods*

If Option  
X24 is  
used and  
Option C  
is not  
used

The *accounting periods* are

1<sup>st</sup> April to 31<sup>st</sup> March


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

If Y(UK)2 is used  
and the date on  
which a payment is  
due is not fourteen  
weeks after the end  
of the *accounting  
period* or Service  
Period

The period is  weeks

If 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  21 days after the date on which payment becomes due

## Z: Additional conditions of contract

If Option Z is used

The *additional conditions of contract* are

### Z Clauses

Clause No.	Clause
Z1	<b>Z1 Environment Agency as regulatory authority</b> Z1.1 The Environment Agency's role as a regulatory authority and as Client under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other. Z1.2 Where statutory consents must be obtained from the Environment Agency in its capacity as a regulatory authority, the Contractor is responsible for obtaining these and paying fees. The Client's acceptance of a tender and the Client's instruction or variation of the <i>service</i> does not constitute statutory approval or consent. Z1.3 An action by the Environment Agency as regulatory authority is the action of Other.
Z2	<b>Z2 Framework Agreement</b> Z2.1 The Contractor shall ensure at all times during this contract it complies with all the obligations and conditions of the Asset Operations Operation, Maintenance, Response Framework Agreement made with the Client.
Z3	<b>Z3 Data Protection</b> Z3.1 The requirements of the Data Protection Schedule shall be incorporated into this contract
Z4	<b>Z4 Liabilities and insurance</b> Z4.1 Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.
Z5	<b>Z5 Risks and insurance</b> Z5.1 Replace clause 84.1 with the following Insurance certificates are to be submitted to the <i>Service Manager</i> on an annual basis.
Z6	<b>Z6 Resolving Disputes</b> Z6.1 Delete clause W2.1
Z31	<b>Z31 Price Adjustment for Inflation TSC</b> 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) CPI (UK, 2015=100). 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 Service Provided to Date is less than or equal to the total of the Prices and b) Inflation remains positive ie 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 <i>service</i> is used for calculating an amount for price adjustment after that date.  Z31.4 Price adjustment Options A and B. Each amount due includes an amount for price adjustment which is the sum of <ul style="list-style-type: none"><li>The change in the Price for Service Provided to Date since the last assessment of the amount due multiplied by the PAF and</li></ul>

	<ul style="list-style-type: none"><li>• The amount for price adjustment included in the previous amount due</li></ul>
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**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

Address for communications

Address for electronic communications

The *fee percentage* is

The *service areas* are

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

N/A

## 2 The Contractor's main responsibilities

If the Contractor is to provide Scope for its plan

The Scope provided by the Contractor for its plan is in

N/A

## 3 Time

If a plan is to be identified in the Contract Data

The plan identified in the Contract Data is

N/A

## 5 Payment

If Option A, C or E is used

The price list is

N/A

If Option A or C is used

The tendered total of the Prices is

N/A

## 9 Resolving and avoiding disputes

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

## 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

## Data for the Short Schedule of Cost Components (used only with Option A)

The *people* rates are **As per the AOMR Lot 1 workbook rates.**

category of person	unit	rate
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

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 **As per the AOMR Lot 1 workbook rates.**

Equipment	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Contractor* are to be agreed.