

1.11.4.3534.

To Be Quoted On All Correspondence



CONTRACT

between

THE HEALTH AND SAFETY EXECUTIVE

and

BRUCE EWAN OF CHEMENTECH

for

THE HYTUNNEL PROJECT

This Contract is made between:

The **HEALTH AND SAFETY EXECUTIVE** (acting as part of the Crown) of Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS (hereinafter called 'the HSE' of the one part) and

Bruce Ewan, Chementech of South Holme, The Mires, Gt. Longstone, Bakewell, DE45 1TE (hereinafter 'the Contractor of the other part), in accordance with the details, terms and conditions stated herein.

WHEREAS

The Contractor was selected to provide services as an independent expert and agrees to adhere to the roles and responsibilities as detailed in Schedule A (where applicable).

1 STATEMENT OF SERVICES REQUIREMENT

- 1.1 The Contractor will carry out on behalf of the HSE a Statement of Services (hereinafter called the "Services") as detailed in Schedule A to this Contract.
- 1.2 The Contractor shall organise and conduct the entire Services in consultation with the HSE where appropriate, and provide all necessary resources of personnel, materials, Services and equipment, except for such resources that may be provided by the HSE at its discretion.
- 1.3 No undertaking shall be deemed to have been made by the HSE in respect of the total quantities or values of the Services to be ordered pursuant to this contract and the Contractor acknowledges and agrees that it has not entered into this contract on the basis of any such undertaking.

2 MANAGEMENT OF THE CONTRACT

- 2.1 The HSE Contract Manager who will be responsible for liaison and certifying completion of the provision and overall management of the Services is identified at Annex 1.
- 2.2 The Services will be monitored by the Contract Manager who will also evaluate the provision on completion.
- 2.3 In all cases, both parties will work within the agreed timescales/constraints and costs outlined at the beginning of the commission.

3 DURATION

- 3.1 The Services shall be deemed to have commenced on 1 March 2019 and shall be completed by 1 March 2022.

4 COSTS

- 4.1 The total amount to be paid by the HSE to the Contractor for the Services shall not exceed £12,000.00, exclusive of VAT.
- 4.2 Any additional costs will be agreed in advance with the HSE Contract Manager and subject to clause 15 Variation to Contract.
- 4.3 Where appropriate, and subject to the HSE Contract Manager's approval, actual and reasonable travel and subsistence costs shall be payable in line with the rates agreed at Annex 2.

5 LIMITATION OF LIABILITY

- 5.1 Subject to Clause 5.2 the liability of the Contractor for any breach of this Contract or arising in any other way out of the subject-matter of this Contract, will not extend to loss of business or profit, or to any indirect or consequential damages or losses. In any event, the maximum liability of the Contractor under or otherwise in connection with this Agreement or its subject matter shall not exceed the Contract price excluding VAT.
- 5.2 Nothing in this Agreement limits or excludes the liability of the Contractor:
 - 5.2.1 for death or personal injury resulting from negligence; or
 - 5.2.2 for any damage or liability incurred by HSE as a result of fraud or fraudulent misrepresentation by the Contractor; or
 - 5.2.3 for any breach of its obligations under the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) and the Data Protection Act (DPA) 2018.

6 IR35 – INTERMEDIARIES LEGISLATION

- 6.1 HSE has undertaken an IR35 assessment of this engagement, and the HMRC online assessment tool determined that IR35 does not apply to this engagement.



Bruce Ewan -
IR35.pdf

7 TAX STATUS

- 7.1 Where the Contractor, or its staff, is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 7.2 Where the Contractor, or its staff, is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 7.3 HSE may, at any time request that the Contractor provides information which demonstrates how it, or its staff, complies with Clauses 7.1 and 7.2 above or why those Clauses do not apply to it.
- 7.4 A request under Clause 7.3 above may specify the information which the Contractor, or its staff, must provide and the period within which that information must be provided.
- 7.5 HSE may terminate this contract if
- a) in the case of a request mentioned in Clause 7.3 above -
 - (i) The Contractor, or its staff, fails to provide information in response to the request within a reasonable time, or
 - (ii) The Contractor, or its staff, provides information which is inadequate to demonstrate either how it complies with Clauses 7.1 and 7.2 above or why those Clauses do not apply to it;
 - (b) in the case of a request mentioned in Clause 7.4 above, The Contractor, or its staff, fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when Clauses 7.1 and 7.2 apply the Contractor, or its staff, is not complying with those Clauses.
- 7.6 HSE may supply any information which it receives under Clause 7.3 to the Commissioners of Her Majesty's Revenue and Customs for the purposes of the collection and management of revenue for which they are responsible.

8 INVOICING AND PAYMENTS

- 8.1 All invoices raised must include the relevant Purchase Order number which will be issued by HSE Procurement Unit. Failure to include the Purchase Order Number may delay payment. Invoices should be submitted electronically in PDF format to APinvoices-HAS-U@gov.sscl.com

- 8.2 Invoices should also include details of work satisfactorily carried out and any VAT properly chargeable.
- 8.3 HSE shall make payment of agreed costs, in arrears, within 30 days of the acceptance of the invoice.
- 8.4 The Contractor shall send a copy invoice along with details of any work satisfactory carried out to the HSE Contract Manager identified at Annex 1.

9 ACCESS TO HSE PREMISES

- 9.1 It shall be the Contractor's responsibility to ensure that, where access to HSE Premises or HSE confidential information is necessary, personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Security Standard.
- 9.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out. Guidance on pre-employment checks may be found at <http://www.cabinetoffice.gov.uk/sites/default/files/resources/hmg-personnel-security-controls.pdf>

10 CONFIDENTIALITY

- 10.1 The Contractor shall not at any time divulge any information or material acquired during the performance of this Contract to any third party without prior permission in writing of the Executive, except where required in the course of any legal proceedings.
- 10.2 The Contractor shall keep documents and other materials produced or acquired in the course of the contract in accordance with The Criminal Procedure and Investigations Act 1996 (CPIA).
- 10.3 HSE may disclose the Confidential Information of the Contractor:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 10.3(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;

- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause.

11 PUBLICATION

- 11.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. HSE shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 11.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.
- 11.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

12 GDPR DATA PROTECTION

- 12.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed below by the Customer and may not be determined by the Contractor.
- 12.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 12.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

12.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- a) process that Personal Data only in accordance with this section, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- c) ensure that :
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;

- (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

12.5 Subject to clause 12.6, the Contractor shall notify the Customer immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event.

12.6 The Contractor's obligation to notify under clause 12.5 shall include the provision of further information to the Customer in phases, as details become available.

12.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 12.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- a) the Customer with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- c) the Customer, at its request with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Customer following any Data Loss Event;
- e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

12.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- a) the Customer determines that the processing is not occasional;
- b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

12.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

12.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

12.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- a) notify the Customer in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Customer;
- c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 12.11 such that they apply to the Sub-processor; and
- d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonable require.

12.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

12.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

- 12.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**");

- (a) furnished to or made available to the Contractor by or on behalf of the HSE shall remain the property of the HSE; and
- (b) prepared by or for the Contractor on behalf of the HSE for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the HSE;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

- 13.2 The Contractor hereby assigns to the HSE, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 13.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

- 13.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

14 VARIATION TO CONTRACT

- 14.1 Except where expressly stated in this contract, no change, amendment or modification shall be effective unless in writing and signed by the duly authorised representatives of both parties.

- 14.2 Any agreed changes to the Contract or Schedule A (Programme of Work) will be in the form of a Contract Change Note (CCN), which will be raised and issued by the HSE Procurement Unit.

15 GOVERNING LAW

- 15.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

16 TERMINATION

- 16.1 This contract may be terminated by either party by giving one months written notice. In the event of termination by HSE, the contractor shall provided with any re-imbursement of costs, actually and reasonably incurred, up to the date of termination, subject to the limit specified in Clause 4 above.

As Witnessed at the Hands of the Parties

SIGNATORIES

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN AGREED:

Signature

Name in Capitals

Position

Date

Duly authorised to sign on behalf of

Bruce Ewan, Chementech

South Holme, The Mires, Gt. Longstone, Bakewell, DE45 1TE

Signature

Name in Capitals

Position Procurement Manager

Date

Duly authorised to sign on behalf of the

HEALTH AND SAFETY EXECUTIVE

Procurement Unit, Building 2.3, Redgrave Court, Merton Road, Bootle, Merseyside
L20 7HS

Schedule A

STATEMENT OF SERVICES REQUIREMENT

The Contractor shall undertake the following Statement of Service.

This contract is for up to a total of 200 hours of work on the HyTunnel project, which includes;

- 1) instrument identification needs;
- 2) fabrication needs for IPs and Ops, and
- 3) testing and data analysis input support.

Timescales will cover from March 2019 to March 2022 throughout design, testing and reporting phases. The costs for this work are based on 200 hours support at a cost of £12,000.00

Hourly rate

The agreed hourly rate for this Contract is £60.00 per hour.

Accommodation and Travel Expenses as current HSE Schedule

Should Travel & Accommodation be required the contractor will be subject to HSE expense rates and limits, these are shown in Annex 2.

Schedule B - HSE Terms and Conditions of Contract.



Schedule B - Terms
and Conditions of C

Annex 1

CONTACT LIST

HSE Contacts	Contractor Contacts
Contractual Queries	
Contract Managers / Technical Queries	

HSE UK TRAVEL AND SUBSISTENCE RATES

Car Mileage Rates (for using your own vehicle) – All engine types and sizes

Up to 10,000 mile per financial year	45p per mile
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Over 10,000 miles per financial year	25p per mile
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NB: Your vehicle must be insured for Business Use

Public Transport Fares

Second Class Rail travel, Air fares (within UK only), Bus fares etc. will be payable at cost on production of receipts, provided that the most economical means of transport has been used.

SUBSISTENCE RATES

All receipts **must** be retained to support your claim.

Day Subsistence

More than 5 hours and up to 10 hours	Actual costs up to £6.00
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More than 10 hours and up to 12 hours	Actual costs up to £10.00
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More than 12 hours	Actual costs up to £16.00
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Night Subsistence

Booked via HSE Accommodation Booking Agency :

The 24 hour overnight subsistence allowance consists of 2 components :

Meal One	Actual costs up to £6.00
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Meal Two	Actual costs up to £15.00
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This is payable as a “24 hour” rate and amounts incurred over any individual component will not be reimbursed by HSE. The rates are agreed with HMRC to obtain dispensation from tax liability.

Booked making your own Commercial Arrangements

Actual cost of bed and breakfast up to a maximum of:	£93.00 per night in London or £70.00 per night elsewhere
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