nec4

Engineering and Construction Contract

OPTION A: FIXED PRICE

Contract Data Forms

June 2017
(with amendments January 2019)

P3

Form of Agreement

This agreement is made on the .....28th....day of...February...2023.....between

The Environment Agency (*the Client*) of Horizon House, Deanery Road, Bristol, BS1 5AH

and

J T Mackley & Co Ltd (*the Contractor*) of Bankside House, Henfield Road, Small Dole, West Sussex, BN5 9XQ

Whereas the Client wants to have the following works provided:

The Works include civil engineering (civils) work and mechanical, electrical, instrumentation, control, automation (MEICA) work. The works are described as follows:

- Installation of an Auto Start System for the Generator and a UPS
- Remove existing trough and undertake MEICA Works in relation to the Installation of Pipework and Ducting on the left-hand bank of Allington Sluice
- Prepare all blacktop and block paving as necessary and provide resin bonded surfacing to the left bank and lock island of Allington Lock.
- Prepare surface and provide new surfacing, kerbing and drainage to improve the car park upstream of the lock keeper's cottage near the slipway.
- Construct a curtilage listed ragstone wall with a sloped profile and an opening for vehicle access in accordance with Listed building consent reference: 21/505592/LBC

1. The Contractor will Provide the Works in accordance with the conditions of contract

2. The Client will pay the Contractor the amount due and carry out his duties in accordance with the conditions of contract.

3. The documents forming part of this agreement are;

    a. the Contract Data part one

    b. the Contract Data part two

Executed as a Under Hand by the **Client**

[redacted]

Executed as a Under Hand by the **Contractor**

[redacted]

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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	W2 Resolving and Avoiding Disputes X2 – Changes in law X7 – Delay Damages X9 – Transfer of rights X10 – Information Modelling X11- Termination by the *Client* X15 – The *Contractor's* design 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	The Works include civil engineering (civils) work and mechanical, electrical, instrumentation, control, automation (MEICA) work. The works are described as follows: □ Installation of an Auto Start System for the Generator and a UPS □ Remove existing trough and undertake MEICA Works in relation to the Installation of Pipework and Ducting on the left-hand bank of Allington Sluice □ Prepare all blacktop and block paving as necessary and provide resin bonded surfacing to the left bank and lock island of Allington Lock. □ Prepare surface and provide new surfacing, kerbing and drainage to improve the car park upstream of the lock keeper's cottage near the slipway. □ Construct a curtilage listed ragstone wall with a sloped profile and an opening for vehicle access in accordance with Listed building consent reference: 21/505592/LBC

The *Client* is

Name	Environment Agency
Address for communications	The Environment Agency Horizon House Deanery Road Bristol BS1 5AH
Address for electronic communications	[redacted]

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The *Project Manager* is

Name

Address for communications

Address for electronic communications

[redacted]

The *Supervisor* is

Name

Address for communications

Address for electronic communications

[redacted]

The Scope is in | 221221 - ALSRW - Allington Lock and Sluice Refurbishment Works_Scope

The Site Information is in | 230124 – ASLRW – Site Information

The *boundaries of the site are* | 230127 – ASLRW - Working Areas

The *language of the contract* is | English

The *law of the contract* is the law of | England

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

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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

3 Time

The *starting date* is 06 March 2023

The *access dates* are

	part of the Site	date
(1)	The Site	06 March 2023
(2)	ASite	06 March 2023
(3)		

The *Contractor* submits revised programmes at intervals no longer than 2 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 28 April 2023

Taking over the *works* before the Completion Date

The *Client* **is/~~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 4 weeks

The period between Completion of the whole of the *works* and the *defects date* is 52

The *defect correction period* is 2 except that

- The *defect correction period* for Safety issue for the public is 24 hours
- The *defect correction period* for [ ] is [ ]

5 Payment

The *activity schedule* is
230127 - ASLRW - Allington Lock and Sluice Activity Schedule

The tendered total of the Prices is *£824,860.83*

The *currency of the contract* is the GBP Sterling

The *assessment interval* is 1 month

The *interest rate* is 2 % per annum (not less than 2) above the *Base rate (Bank Rate)* rate of the Bank of England bank

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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 7 days of the date of the invoice.

The *exchange rates* are those published in

on (date)

6 Compensation events

The place where weather is to be recorded is

The nearest calibrated Met Office Weather Station to the site

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:

The *weather measurements* are supplied by

The Met Office

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

Maidstone

and which are available from

The 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

P3

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) None (2) (3)
	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
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

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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)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

[redacted]

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

section	description	completion date
(1)		
(2)		
(3)		
(4)		

X6: Bonus for early Completion

If Option X6 is used without Option X5

The bonus for the whole of the *works* is _____ per day

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If Option X6 is used with Option X5

The bonus for each *section* of the *works* is

section	description	amount per day
(1)		
(2)		
(3)		
(4)		

The bonus for the remainder of the *works* [ ]

X7: Delay damages

If Option X7 is used without Option X5

Delay damages for completion of the whole of the *works* are [nil] per day

If Option X7 is used with OptionX5

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

section	description	amount per day
(1)		
(2)		
(3)		
(4)		

The delay damages for the remainder of the *works* are [ ]

X15: The Contractor's Design

The Contractor's design

X15

X15.1 The Contractor is not liable for a Defect which arose from its design unless it failed to carry out that design using the skill and care normally used by professionals designing works similar to the works.

X15.2 If the Contractor corrects a Defect for which it is not liable under the contract it is a compensation event.

X15.3 The Contractor may use the material provided by it under the contract for other work unless

- the ownership of the material has been given to the Client or
- it is stated otherwise in the Scope.

X15.4 The Contractor retains copies of drawings, specifications, reports and other documents which record the Contractor's design for the period for retention. The copies are retained in the form stated in the Scope.

X15.5 The Contractor provides insurance for claims made against it arising out of its failure to use the skill and care normally used by professionals designing works similar to the works. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the starting date until the end of the period stated in the Contract Data.

X15.6 Before the starting date and on each renewal of the insurance policy until the defects date, the Contractor submits to the Project Manager for acceptance a certificate which states that the insurance required by this clause is in force.

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After the defects date and on each renewal of the insurance policy until the end of the period stated in the Contract Data for which insurance is to be maintained, the Contractor submits to the Client for acceptance a certificate which states that the insurance required by this clause is in force. The certificate is signed by the Contractor's insurer or insurance broker. The Project Manager or the Client accepts the certificate if the insurance complies with this clause and if the insurer's commercial position is strong enough to carry the insured liability. The Client's acceptance of an insurance certificate provided by the Contractor does not change the responsibility of the Contractor to provide the insurance stated in this clause.

X16: Retention

If Option X16 is used	The *retention free* amount is	£0	
	The *retention percentage* is	0%	%

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

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 £1,000,000

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to £1,000,000

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 £1,000,000

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

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*

Z: *Additional conditions of contract*

If Option Z is used — The *additional conditions of contract* are

Clause No.	Clause
Z1	**Z1 Environment Agency as regulatory authority** 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 works does not constitute statutory approval or consent. Z1.3 An action by the Environment Agency as regulatory authority is the action of Other.
Z2	**Z2 Framework Agreement** Z2.1 The Contractor shall ensure at all times during this contract it complies with all the obligations and conditions of the Crown Commercial Services Framework Agreement.
Z3	**Z3 Data Protection** Z3.1 The requirements of the Data Protection Schedule shall be incorporated into this contract
Z4	**Z4 Liabilities and insurance** Z4.1 Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.
Z6	**Z6 Resolving Disputes** Z6.1 Delete clause W2.1
Z7	**Z7 Correctness of Site Information and other documents** Z7.1 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. Z7.2 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 he relies on for the purpose of pricing for, or providing the *works*.
Z8	**Z8 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....."

Z9

Z9 Disallowed Costs

"Add the following bullet to clause 11.2 (26) Disallowed costs
• was incurred due to a breach of safety requirements, or due 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."

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	J. T. 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 9.0 %

The *working areas* are

Compound areas, agreed access/egress points, Mackley Offices, Designers' Offices, Sub-Contractors' Offices and Mackley Yard in Small Dole.

The *key persons* are

Name (1)

Job

Responsibilities

Qualification

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

[redacted]

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

230131 - ALSRW - Allington Lock and Sluice Refurbishment Works_Scope revised format

3 Time

The Programme Identified in Contract Data is:

Tender Programme ref: 22.093/RPFA/001 Rev 1 dated 01.03.23

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

[redacted]

If Option W3 is

Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *project bank* is

N/A

named suppliers are

N/A

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

23

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
Welder	£75.00/hour
Fabricator	£75.00/hour

The rates for Defined Cost of design outside the Working Areas are

category of person	rate
Civil Engineer: Senior	CCS framework rate
Civil Engineer: Qualified	CCS framework rate
Mechanical Engineer	CCS framework rate
Electrical Engineer	CCS framework rate

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

ACTIVITY SCHEDULE:- 230127 - ASLRW - ALLINGTON LOCK AND SLUICE ACTIVITY SCHEDULE.

Activity Schedule

Environment Agency

Returnable Documents
NEC4 – ECC
Option A contract

The *works* **Allington Lock & Sluice Refurbishment Works**
Ref **C15677**

Item No.	Activity Description	[redacted]
A	Supervision	
B	Prelims: Welfare	
C	Prelims: Labour & Plant	
1	Preparatory Works	
2	Mobilisation	
3	Drainage Works	
	Car Park	
4	Kerbs	
5	Golpa Surfacing	
6	Car Park Surfacing	
7	Footway Surfacing	
	Lock Works	
8	Removal of Bollards & Seats	
9	Reinstatement fo Existing Ragstone Wall	
10	Excavating and preparing for Resin Bonding including removal of Furniture and Bollards	
11	Resin Bonding Surfacing Works	
12	Reinstalling Benches and Street Furniture	
13	Hydraulic Works and associated BWIC	
14	Making Good and Reinstatement	
15	Demobilisation	
	The tendered total of the Prices	**£ 824,860.83**

D3

P3