

Schedule 2 – Call Off Employer Contract Data and Terms



MF1 (Rev 6) Call off Contract

**South West MEICA Framework
Ref –**

A contract between The Environment Agency

and nmcn Sustainable Solutions Ltd

for Holbeam Dam Improvements

FORM OF AGREEMENT

This Agreement is made the day of between:

(1) ENVIRONMENT AGENCY of Horizon House, Deanery Road, Bristol, BS1 5AH (the "Purchaser") of the one part;
and

(2) (the "Contractor") of the other part.

Recitals:

(A) The Purchaser wishes to have certain Works executed by the Contractor, briefly described as:

Works to address Measures to be taken in the Interests of Safety at Holbeam Dam, Newton Abbot

- Construction of screen bypass culvert controlled by a hydraulic penstock upstream of the dam. This is to act as a bypass to the Holbeam Dam debris screen to act as a reservoir drawdown feature should the screen blinds totally.
- Holbeam Dam radial gate to be replaced to provide a 30 year asset life. – (radial gate to be provided for installation by the Purchaser for installation by Contractor).
- The mechanism for operating the gate is to be replaced from a winch operated mechanism to a hydraulically operated mechanism to ensure improved resilience, including additional functionality and lock out mechanism on the radial gate.
- Construction of a new control building to operate the Holbeam Dam radial gate. Decommissioning of equipment within the existing control building. The new building is to be located to be relocated to the east bank above the top water level in a 1:1000 year event. This is to include a new motor control centre (MCC) and required hydraulic equipment.
- Installation of required ancillary services to the new control building.
- Replacement of downstream gabions on the east bank.
- Installation of eel passage improvements to the stilling basin weir and the channel immediately below the weir.

The services required are detailed in Specification Holbeam Dam MIOS 1&2 v4 – dated 30/3/2021

The Contractor is to allow for risk associated with flooding up to a 1 in 10 year annual exceedance probability event within their contractual risk allowance.

The Purchaser has appointed [REDACTED] of Arcadis as the Engineer for the purposes thereof (the "Engineer").

(B) The Purchaser has agreed to engage the Contractor for the described works in the sum of £ £1,351,488 (one million three hundred and fifty one thousand four hundred and eighty eight pounds) (the "Contract Price").

It is agreed as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions.

2. The following documents and their annexes which have been bound in herewith shall be deemed to form and be read and construed as part of the Contract:
- (a) this Agreement;
 - (b) the General Conditions and Appendix;
 - (c) the Special Conditions;
 - (d) the Specification and the drawing (if any) annexed to, or referred to in, the Contract;
 - (e) the Schedules;
 - (f) the Letter of Acceptance; and
 - (g) the Tender or Contractor's submission.
3. In consideration of the payments to be made by the Purchaser to the Contractor in accordance with the Contract, the Contractor agrees to design, manufacture, deliver to Site, install, test and complete the Works and to remedy defects in the Works in conformity in all respects with the provisions of the Contract.
4. The Purchaser shall pay the Contractor, in consideration of the execution and completion of the Works and the remedying of defects in the Works, the Contract Price or such other sum as may become payable under the provisions of the Contract together with the Value Added Tax properly chargeable on such sums, at the times and in the manner prescribed by the Contract.
5. If any question, dispute or difference shall arise between the Purchaser and the Contractor in relation to the Contract or in any way related to the Works which cannot be settled amicably it shall be referenced to arbitration in accordance with Clause 52 (Disputes) of the General Conditions.

IN WITNESS whereof the parties have executed and delivered this Agreement as a deed on the date above written

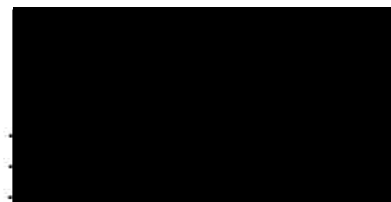
Signed for and on behalf of the
Environment Agency by:

Authorised Signatory:

Name:

Position:

Date:



27th May 2021

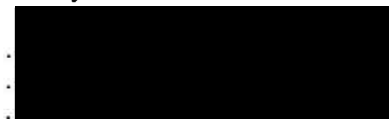
Signed for and on behalf of nmcn Sustainable Solutions Ltd by:

Authorised Signatory:

Name:

Position:

Date:



14/5/21

The Terms and Conditions comprise the:

Model Form MF/1 (Rev 6) General Conditions of Contract (2014 Edition) including:

- Form of Sub-Contract

amended as set out in:

- the Appendix to the General Conditions of Contract attached hereto;
- the Amendments and Additions to the General Conditions of Contract contained in Schedule 2 of the Deed of Agreement concerning the South West MEICA Framework; and
- the Special Conditions of Contract attached hereto.

General Conditions of Contract**Appendix**

Where Clause numbers are specified here they refer to the General Conditions of Contract unless otherwise indicated.

Clause 1 - Definitions

Sub-Clause 1.1m The Engineer is [REDACTED] the Arcadis

Sub-Clause 1.1s The Nominator is from the following institution:
The President of the Institution of Electrical Engineers or the President of the Institution of Mechanical Engineers as determined by the Purchaser

Sub Clause 1.1v The Performance Tests are to be detailed in the Specification or set out below (as may be further defined in the Specification) or otherwise agreed between the parties.

Name of Performance Test	Performance requirements
Mechanical Site Acceptance Testing	To the satisfaction of the Engineer
Electrical, Instrumentation Control and Automation, Site Acceptance Testing	To the satisfaction of the Engineer
Hydraulic Site Acceptance Test	To the satisfaction of the Engineer
Paint inspection testing.	To the satisfaction of the Engineer
Site inspection, and completion and commissioning certificates of acceptance shared with Purchaser and Purchaser appointed Qualified Civil Engineer (under the meaning of the Reservoir Act 1975)	Site inspection, completion and commissioning certificates meet with acceptance of the Engineer, and Purchaser appointed QCE.
Eel pass approval.	Environment Agency Eel pass is certified upon completion of construction.

Sub-Clause 1.1cc

Sub-Clause 1.1ee

Sections

The Works are not divided into Sections

Sub Clause 1.1II

Special Conditions

The following Special Conditions form part of the Contract:

OI 13_06 Implementation of automatic control at Environment Agency sites

OI 369_13 Standard MEICA Specification (including associated SDs)

OI 412_13_SD01 Minimum Technical Requirements

Time for Completion

The date specified for Completion of the Works is 31st October 2021

The date specified for the commencement of the Works is 17th of May 2021

Sub-Clause 2.1	<p>Engineer's duties</p> <p>The Engineer is required to obtain the Purchaser's prior specific approval before exercising the following duties:</p> <p>Implementation and agreement of any change under the contract.</p> <p>Variation Order.</p> <p>Signature of Site Acceptance Tests.</p>
Sub-Clause 4.1 Sub-Clause 10.1	<p>Precedence of documents</p> <p>The order of precedence of the documents forming the Contract is as follows:</p> <ul style="list-style-type: none">(a) this Agreement;(b) the Letter of Acceptance;(c) the Appendix;(d) the Special Conditions;(e) the General Conditions;(f) the Specification;(g) the Contractor's submission
Sub-Clause 5.5	<p>Prime Cost items</p> <p>Percentage to be added - N/A</p>
Sub-Clause 6.2	<p>Labour, materials and transport</p> <p>Sub-clause 6.2 of the General Conditions shall not apply</p>
Sub-Clause 8.1	<p>Provision of bond or guarantee</p> <p>Not required</p>
Sub-Clause 10	<p>Notices</p> <p>Purchaser's contact details: [REDACTED] Address: Environment Agency, Manley House, Exeter, EX2 7LQ E-mail address: [REDACTED]</p> <p>Engineer's contact details: [REDACTED] Address: Arcadis LLP, Rydon House, Pynes Hill, Exeter, EX2 5AZ E-mail address: [REDACTED]</p> <p>Contractor's contact details: [REDACTED] Address: Unit D Plymouth Trade Park, Macadam Road, Cattedown, Plymouth, Devon, PL4 0RU Facsimile Number: N/A E-mail address: [REDACTED]</p>
Sub-Clause 11.5	<p>The details of this Sub-Clause are set out in the Amendments and Additions to the General Conditions of Contract</p>
Sub-Clause 11.7	<p>Power, etc. for tests on Site</p> <p>The following items will not be provided by the Purchaser:</p> <p>N/A</p> <p>The Contractor is to provide the aforementioned items.</p> <p>Use of the following items will be charged to the Contractor:</p> <p>N/A</p>
Sub-Clause 14.2	<p>Form of Programme</p> <p>The details of this Sub-Clause are set out in the Amendments and Additions to the General Conditions of Contract</p>

Sub-Clause 18.2

Site Services

The rates for Site Services provided by the Purchaser:
N/A

Sub-Clause 27.1

For the purpose of these works the Contractor is instructed to manage and mitigate the impact of COVID 19 and work in accordance with Public Health England guidance, as may vary from time to time, until 1st of June 2021. This is a variation to the works in accordance with clause 27.1.

Sub-Clause 34.1

Delay in Completion

Percentage of Contract Value to be paid or deducted for each week of delay to completion of the whole of the Works [REDACTED]

Maximum Percentage of Contract Value which payments or deductions shall not exceed [REDACTED]

Sub-Clause 34.2

Prolonged delay

Maximum loss recoverable by the Purchaser
[REDACTED]

Sub-Clause 35.8

Consequences of failure to pass performance tests

The Time for completion of Performance Tests is set out in the Specification or set out below (as may be defined in the Specification)

Name of Performance Test	Time for Completion of Performance Test (days after taking over)
Test on Completion – Witness testing by Purchaser's nominated QCE.	10 days

- (a) The liquidated damages for failure to pass Performance Tests are set out in the Specification or set out below (as may be further defined in the Specification)

Not Used

Name of Performance Test	Acceptable limit and liquidated damages

If no details are inserted into the Specification or table, the damages shall be treated wherever they cause delay to the Programme as delays to Completion and the details for such delays are set out in the Sub-Clause 34.1 within this Appendix to the General Conditions of Contract

Sub-Clause 36.1

The Defects Liability Period shall be 12 Months after taking-over.

Sub-Clause 36.3

Notice of defects

The Defects Liability Period in respect of any repair or replacement shall not extend beyond 12 months from the date of taking-over under clause 29 (Taking-over)

Sub Clause 39.1

Payments by instalments

where payment is to be made by way of monthly valuations)

The Contractor is entitled to monthly payments in respect of:

- (i) The value of work executed on Site;
- (ii) [the value of Plant in the course of manufacture, and]
- (iii) [...% of the value of Plant delivered]

Sub Clause 39.2

Time for application

- (iv) Time for applications for interim certificates of payment
Applications for interim payment certificates shall be made on or after the date that the relevant milestone deliverable has been achieved

If the whole or any part of the Works have been suspended pursuant to sub-clause 25.1 (Suspension of work, delivery or installation), applications for interim payment certificates shall be made on or after the last Friday of each month in relation to the Works affected by the suspension until the suspension is lifted, the suspended Works are omitted or the Contract is terminated.

(where payment is to be made by way of monthly valuations)

Applications for interim payment certificates shall be made on or after the last Friday of each month

Sub Clause 39.3

Form of application

- (d) Document to accompany applications for a certificate of payment

(where payment is to be made by way of monthly valuations)

- (v) Evidence required of the value of work done on the Site:
"Each application shall be supported by separate sheets setting forth in detail the order of the Schedules of Rates the Contract Price particulars of the Works executed on the Site and of the Plant delivered to the Site pursuant to the Contract since the period covered by the last preceding certificate (if any)"

- (vi) Evidence required of the value of work done for Plant in the course of manufacture:

Evidence is to be witnessed by the Engineers Representative such that the Engineer is satisfied that the value of the application is correct.

- (vii) Evidence required for Plant delivered

Evidence is to be witnessed by the Engineers Representative

- (viii) such that the Engineer is satisfied that the value of the application is correct and the plant delivered meets the identified standards agreed between the Purchaser, Engineer and Contractor

Sub-Clause 39.5

Final date for payment

The Final Date is 30 days after the Due Date

Sub-Clause 40.4

Delayed Payment

The rate of interest on overdue payment shall be 2% per annum above the Bank of England base rate in force from time to time during the period of delay

Sub-Clause 40.6

Advance Payment

Advance Payments does not apply

Sub-Clause 40.7

Currencies of Payment

The Contract Price (including any adjustments) shall be paid in the following currencies:
English Pound Sterling

Sub-Clause 40.8

Taxes

The Purchaser is responsible for the following taxes:
Unless otherwise stated in the Contract the Contract Price is deemed to exclude Value Added Tax. To the extent that Value Added Tax is properly chargeable on the supply to the Purchaser of any goods or services provided by the Contractor under the Contract, the Purchaser shall pay such Value Added Tax as an addition to payments otherwise due to the Contractor under the Contract

Sub-Clause 41.2

Allowance for profit on claims
Percentage to be added – nil %

Sub-Clause 44.3

Limitation of contractor's liability
Limit of Liability - £5,000,000 (five million pounds)

Sub-Clause 47.4

Third party insurance
The details of this Sub-Clause are set out in the Amendments and Additions to the General Conditions of Contract

Sub-Clause 52.1

Arbitration

- (c) The arbitration rules are Rules of Arbitration of the International Chamber of Commerce (2012)
- (d) The seat of the arbitration is London, England
(where Special Condition 2: Adjudication applies)

Sub-Clause 52.4

Adjudication

- (c) The adjudication rules are: As set out in Construction Industry Council Model Adjudication Procedure: Fourth Edition

Sub-Clause 53.1

Applicable law

The substantive law of the contract is the law of England