**Contract Agreement Guidance and Template for Construction Works funded by WaterAid**

**Published**: February 2021

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| **How to use this document?**  Depending on the nature of construction, Contract Agreement (“CA”) should be developed through consultation with the partners and these guidelines and template can be used to facilitate this.    The specific wording and structure used in this template are not fixed and can be adjusted to suit the specific context of the works or used to adapt existing contract templates.  Additional clauses can be added and clauses can be removed.  **Instructions:**  The text in **bold and between [ ]** should be updated**.** The text in italics, blue and between { } is instructions and should be deleted.   |  |  | | --- | --- | | *xxxxx* | *Guidance notes, to be deleted after drafting the contract* |   **Important reminder**  All CA must annex the following documents (or partner organisation equivalent policies), and reference them within the document:   * Health and Safety (H&S) on Construction Sites Policy * Safeguarding policy and Safeguarding Code of Conduct for Partners * Fraud policy * Water Quality Policy (if applicable) |

Contractor logo

Partner or WaterAid logo

Contract Agreement (CA)

**Between**

**[insert ‘Client’ i.e. WaterAid Country or Partner organisation]**

**And**

**[Insert ‘Contractor’]**

**For**

**[Project title]** *{this should clearly contain the work to be done and the areas/cities/communities where it will be implemented, e.g.* *Construction of xxx in xxx community of xxx district}*

**Contract no: [x]**

# CONTRACT AGREEMENT (CA)

This Contract Agreement (CA) dated **[insert date]**, is between

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| Select from the two options below depending on whether it is WaterAid or a partner organisation engaging the contractor. |

*{Keep this paragraph if WaterAid managed}* WaterAid **[insert country]**, a Country Programme Office of WaterAid, a registered charity in the United Kingdom, and having a Country Office at **[insert address]**, hereinafter referred to as the “Client”. For the purpose of this Agreement the Client will be represented by **[name of *Country Director or principle staff member*]**.

*{Or keep this paragraph if partner managed}* **[PARTNER ORGANISATION]**, a legally registered **[Non-Governmental Organisation]** *{or insert relevant organisation type}*, and having its registered office located at **[insert address]**, and hereinafter referred to as the “Client”. For the purpose of this Agreement the Client will be represented by **[insert principle staff member of partner organision]**.

|  |
| --- |
| Fill in contractor details below |

and

**[insert Contractor],** a **[construction firm]** *{or insert relevant organisation type}*, and having its registered office located at **[insert address]**, and hereinafter referred to as the “Contractor”. For the purpose of this Agreement the Contractor will be represented by **[insert principle staff member of contractor]**.

(together the “Parties”)

The purpose of this Agreement is to ensure that **[insert Client]** and **[insert Contractor]** have discussed, agreed and documented their responsibilities and commitments relating to **[Insert name of Project and Donor reference if applicable]**

This Agreement consists of this document and the following Annexes that form integral parts of it:

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| *Add, delete and adjust any relevant annexes here, for example:* |

**[Annex A: Conditions of contract (if separate)**

**Annex B: Technical specifications, Drawings, Bills of quantities**

**Annex C: Work schedule**

**Annex D: Payment schedule**

**Annex E: Report template/s or completion log templates**

**Annex F: Safeguarding policy and Safeguarding Code of Conduct for Partners**

**Annex G: Health and Safety within construction projects funded by WaterAid**

**Annex H: Fraud policy**

**Annex I: Water quality policy**

**Annex J: background studies (siting, Geophysical survey notes, other)**

**Annex K: Template of completion certificate**

**Annex L: WaterAid Quality Programme Standards]**

This Agreement covers the period from **[Insert start date]** to **[insert end date]**, unless terminated earlier or amended in line this Agreement.

# GENERAL PROVISIONS

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| *This section is about general aspects around the contract. The below list is indicative and can be adapted* |

## Definitions

*Define key terms here to avoid any confusion or misinterpretation in contract implementation. The below list is indicative and definitions can be added, deleted and modified*

1. **“Client”** means **[insert partner or Wateraid country]**, who for purposes of this CA are represented by the **[“Executive Director”]** or persons so appointed by **[insert partner or Wateraid country]**.
2. **“Contractor”** means the firm or individual whose partner (s)/Senior Director(s) are appointed as set forth under the CA.
3. *{if relevant}* **“Partner”** means **[xx]**
4. *{if relevant}* **“NGO”** means **[xx]**
5. **“Supervisor”** means the person appointed by the Client to supervise the Works, from **[insert supervisor i.e name of engineering firm or WaterAid staff title or government staff department]**
6. **“Engineer”** or **“Director of Works”** means an appointed experienced employee of the Contractor with sufficient power to execute the work.
7. **“Works”** means the construction works referred to in this CA.
8. **“Project”** means **[add title of specific project Contract relates to]**
9. **“The Contract Documents”** and **“Contract”** means the documents consisting of this Contract, and documents annexed to this CA.
10. **“Week”** means seven days.
11. **“Defects liability period”** means **[365]** days from the date of completion of all the Works as reported by Contractor and certified after inspection by **[Client?]** or appointed nominee when the Works have been completed and the communities are using the facility.
12. **"Completed Work"** means the Works have been completed as per the specifications and terms of conditions and for the testing period when **[Client, and ?]** have signed the completion certificate for the Works.
13. **“Commencement date”** means the date on which the Works as agreed in the contract negotiations are executed.

This CA shall be executed in the **[English]** language, which shall be the “Ruling Language”. All documentation, correspondence, reports, technical data, certificates that pass between the parties shall be in **[English]**.

## Assignment of Sub-Contracts *{modify as required}*

The Contractor shall not assign or transfer the benefits and the obligations of the CA or any part thereof without the prior written notification and written consent of the Client.

The Contractor shall not assign to third a party any monies due or to become due under this CA.

The Contractor shall not sub-contract the whole of the work or any part of the work there of to any third party without approval in writing in advance by the Client. In this case the Contractor assumes the liability for the services rendered by the sub-contractor.

Any alterations, variations and amendments to any part of the CA shall be made only with due consultation and mutual consent of both the Client and the Contractor given in writing.

This CA enters into force upon the date of its signing by both parties.

**Partial Invalidity:** The invalidity of one provision of this CA shall not affect the validity of the other provisions. Any gap resulting in consequence shall be filled by a provision consistent with the purpose of this CA.

# SCOPE OF WORKS (SOW)

*The Scope of Work (SOW) is where the work to be performed is described. The SOW should contain* ***deliverables and end products that are expected*** *to be provided by the performing party. Depending on the Works the SOW should also contain a time line for all deliverables.*

The overall objective of the work is **[insert one sentence description of project]**.

The specific objectives of the work will be to:

1. **[deliverable 1]**
2. **[deliverable 2]**
3. **[deliverable 3]**

The Works will be implemented in **[insert information on location of work]**

# OBLIGATIONS OF THE CONTRACTOR

*This is where it is specified what is expected from the Contractor in the CA implementation. Some examples are provided below, but should be modified.*

Contractor shall commence the execution of the Contract within **[xx weeks]** of the signing of this CA and the Works shall be completed within **[xx weeks**] in accordance with the Work schedule **[(Annex xx)]**. Failure to comply with this condition, shall mean **[insert consequence, ie. the Contract will be automatically cancelled]**.

The Contractor will be responsible for the provision of all materials and labour as per the specification for the completion of the Works

*{Update depending on who is responsible for detailed siting}* The proposed location of **[infrastructure]** will be determined by **[Client/partner/government?]** but actual determination of the final site and setting out shall be done by the **[Contractor/Supervisor?].**

**Site Establishment, Maintenance and Demobilization:** The Contractor is to allow for the provision, maintenance and removal at the end of the Contract of all offices, stores, covered workshops, canteens, toilet facilities etc. provided for own use as required to execute the Works in accordance with the Contract Documents.

Upon mobilization of the assigned teams and materials for the contracted Works with the Client, the Contractor will not deploy the labour and materials/ equipment to undertake other Clients’ jobs until all Works under the Contract have been completed.

*{if required}* **As-Built Drawings:** The Contractor shall furnish sets of as-built Drawings of the Works to the **[Supervisor/Client]**, showing the permanent Works as actually constructed, within **[one month]** of completion of the Works. Included in the sets of as-built Drawings will be revisions of Tender Drawings and Drawings supplied to the Contractor during the Contract as well as revisions of drawings supplied by the Contractor during the Contract. The As-built drawings submitted by the Contractor will be subject to the approval of the Supervisor. For specific requirements for the As-built Drawings refer to Particular Specifications.

The Contractor shall furnish a list of building tools/equipment and accessory equipment, vehicles, time schedule/working programme and list of staff members to be deployed. An experienced resident Director of Works with sufficient power to execute the work will be identified to the Client.

The Contractor shall be responsible for construction means, methods, techniques, sequences or procedures, and for safety precautions and programme in connection with the Work.

*{Modify this clause depending on the project, its good to have some detail on reporting requirements. This could include a reference to template report or log formats in the Annexes}* The Contractor shall submit to Client a final report of the project, with detailed accounts of materials supplied, labour used, data collected, completion logs, and any supporting reports (i.e. siting studies).

The Contractor will notify the Client of the date they will mobilise to site. Contractor upon mobilization of the assigned teams and materials for the contracted Works will report to the Client in the particular district and inform the local authority of their presence. The **[Client/Supervisor]** will direct the Contractor how to proceed.

The Contractor shall employ or hire as employees of the Contractor for the execution of the Works and in the superintendence thereof only such persons as are careful, skilled and experienced in their several trades and callings.

The Client shall be at liberty to object to and require the Contractor to remove from the Works any person employed by the Contractor in or about the execution of the Works who in the opinion of the Client:

1. misconducts themselves, or
2. is incompetent or negligent in the performance of their work, or
3. fails to comply with the provisions in either the **[Health and Safety policy]** and the **[Safeguarding Code of Conduct for Partners]**

Such persons shall not be again employed upon the Works without the permission of the Client.

*{Compulsory clause}* The Contractor must comply with their obligations for safety, security and protection of the environment, as described Article 6. The Contractor must ensure their employees understand these obligations before commencing the Works.

# OBLIGATIONS OF THE CLIENT

*This is where is specified what is expected from the Client in the CA implementation*

Client shall furnish to the Contractor all pertinent data, documentation and available information which is reasonably required by the Contractor for the carrying out of Works under this CA.

Client shall provide all reasonably cooperation with the resident Director of the Contractor in the negotiations and procedures with the various authorities and public and private organizations for the execution of the Works.

Client shall pay the Contractor according to the payment terms in Article 6.

Client will notify the community/ies of the date the Contractor will mobilise to the site, and ensure they have a mechanism available for reporting any concerns during the Works to the Client.

# RELEVANT POLICIES

*Modify this section depending on whether WaterAid’s policies or partner policies will be used.*

The following policies apply to this Agreement and are attached as Annexes **[reference annexes].** All Parties agree to comply with these policies.

* Code of Conduct
* Safeguarding Partnership Code of Conduct
* Child Safeguarding Policy
* Fraud Policy
* WaterAid Water Quality Policy
* Health and Safety within construction projects funded by WaterAid
* **[WaterAid Programme Quality Standards]**
* **[Other WA[X] policies and key documents as agreed (give details)]**

# PAYMENT

*Here we clarify the payment schedule and conditions. This generally linked to the progress and completion of Works and upon specific approvals processes agreed.*

Total budget: The maximum total budget for the Works is **[xxxxx USD].** **[Payment will be adjusted in accordance with actual work carried out on site as per the unit costs in the Bill of quantities (BOQ) and as certified by the Supervisor]** *{If this will vary depending on actual work done then specify this here}*

**Advance payment:** The Client agrees to pay an advance payment equivalent to **[xx%]** of the Contract fee within **[two weeks]** of the CA coming into force and upon request from the Contractor for mobilization of the equipment and materials to sites. *{adjust depending on advance payment arrangements}*

Subsequent payments: The subsequent payments shall be made as described [below/in Payment Schedule Annex x] and will be adjusted for deductions for advance payments **[and retention of 10% of total Contract sum for the performance guarantee]**. *{include if relevant}*

*{use this if payments are done monthly on % of work completed}* The Contractor shall submit to the Client monthly statements of the estimated value of the Work executed less the cumulative amount certified previously. At the time of valuation, the percentage of each activity completed as listed in the schedule of Works shall be assessed and agreed between the Supervisor and the Contractor, and the Supervisor will sign the certificates. The percentage shall be used to calculate the amount due for that activity. The Client agrees to pay the Contractor the certified sum **[two weeks]** after receiving the certificates.

*{use this if payments are done based on milestone}* Subsequent payments will be made at the following milestones as listed in the schedule of Works, whereby the Contractor shall submit to the Client a statement of the estimated value of the Work executed less the cumulative amount certified previously. The Supervisor must approve and sign the statement certifying completion of relevant milestones.

1. First instalment: **[insert milestones]**
2. Second instalment: **[insert milestones]**
3. Final instalment: The remaining contract amount shall be paid within **[two weeks]** after the Works are certified 100% completed by the Supervisor.

5.07 *{include if relevant}* **Performance guarantee retention for defects liability period**

The Client shall retain from each payment due to the Contractor of proportion stated herein of 10% until completion of the whole of the Works. 100% of retained funds shall be repaid to the Contractor when the Defects Liability Period **[(365 days from xxx)]** has passed and the **[Engineer/Director of Works]** has certified that all defects notified by the Supervisor to the Contractor before the end of this period have been corrected.

On completion of the Works, the Contractor may substitute retention money with an “on demand” Client guarantee. The certificate of completion will be issued by the appointed Supervisor to the Contractor immediately after the Works are deemed completed by **[insert certifier]**.

*{Could insert a table of the payment schedule here to make it clear what will be paid when, and how it will be calculated, or refer to the payment schedule in the Annex}*

*{include if needed}* The payment shall be made in the following bank details of the Contractor.

Name and address of Bank:

Account name:

Account Number:

# INSURANCE

*It is important to clarify responsbility for insurance*

Contractor shall obtain and maintain, at its sole cost, the insurance of Contractor's employees, officers, agents or subcontractors, in the performance of this Contract from the date hereof until the Project Completion Date.

Contractor agrees to provide a copy of all insurances and/or other documents that provide evidence that Contractor is adequately covered for risk.

# STATUTORY AND LEGAL REQUIREMENTS

*It is important to clarify legal and statutory requirements*

Client shall not be liable for any expenditure incurred in excess of the payments contribution specified in this CA.

Client shall not be liable to indemnity any third party in respect of any claim, debt, damage or demand arising out of the implementation of this CA and, which may be made against the Contractor.

To the fullest extent permissible in law the Client will not be liable for any injuries, deaths, losses or damages caused as a result of the Contractor’s activities unless and to the extent caused by the Client’s gross negligence or wilful misconduct.

The Contract shall be governed by the laws of **[Country]** and shall be subject to the exclusive jurisdiction of the courts of **[Country]**

Where either Party engages any consultant, contractor, sub-contractor, adviser or agent (a “Representative”) the engaging Party will ensure that such Representative is bound by the obligations of this Agreement, relevant laws and taxes to the extent they apply to the representative in their role on the project.

# DISPUTE AND ARBITRATION

*It is important to clarify legal procedures to follow in case of dispute or conflict around the Works.*

This CA shall be executed by the parties hereto in good faith, and in case any dispute occurs concerning the interpretation or performance of this CA, the parties will use all reasonable endeavours to settle such matters between them.

In the event that an amicable settlement cannot be reached through consultation, the matter shall be referred to the arbitration of a person, to be agreed upon between Client and the Contractor preferably from the Engineering Institute of **[Country]**.

The arbitral award shall be final and binding upon the parties hereto and the parties shall comply in good faith with the decision.

# EARLY TERMINATION

*Precision on conditions which should be considered in case we need to end the contract prior to the normal planned date/time.*

Client may terminate this CA upon **[fourteen (14)]** days of prior written notice to the Contractor, should the Contractor not fulfil his obligations as stipulated in Article 4.

The Contractor may terminate this CA upon **[fourteen (14)]** days' prior written notice to Client, should Client delay the payment stipulated in Article 6 for more than **[twenty-eight (28)]** consecutive days.

In the event of Early Termination for the reasons stated in this article, the Contractor shall be paid by Client, a fair and reasonable proportion of the contract fee due on the basis of the Contractor's Works carried out up to the termination date, as certified independently by **[insert]**.

If the termination of contract is due to default of the Contractor, Client is entitled to payment for damage resulting from such default.

# FORCE MAJEURE

*Here we should specify what we mean by “force majeure” and what events likely to be considered as such*

Neither party shall be deemed to be in default or in breach of the Contract if they are unable to perform his obligations under the Contract owing to unforeseeable events beyond the control of the parties. Such events (hereinafter referred to as "Force Majeure") include, but shall not be limited to the following:

1. Acts of God, including storm, earthquake, flood or any other such occurrences of the forces of nature as could not be reasonable foreseen or reasonably provided against.
2. War (declared or undeclared), hostilities, invasion, act of any foreign enemy, threat of or preparation for war, riot, insurrection, civil commotion, rebellion, revolution, usurped power, civil war, and labour troubles or other industrial troubles, strikes, embargoes, blockades, sabotage of labour.

Notwithstanding the foregoing, the occurrence of Force Majeure shall not prejudice nor otherwise affect either party's liability to pay remuneration or re-reimbursement of expenses due to the other party.

# LIQUIDATED DAMAGES

*In this article we should specify a predetermined amount of money that must be paid as damages for failure to perform. Liquidated damages are a contract-based remedy for late completion of the contract.*

This CA applies liquidated damages in case of failure to perform by the Contractor

The amount of the liquidated damages is the parties' best estimate at the time they sign the contract of the damages that would be caused by a breach of the contract, as independently determined by **[define who will determine]**.

The amount of liquidated damage is fixed to **[$25 per day for each $100,000 of the contract price].**

# TERMINATION OF CONTRACT

*Terminating a contract means legally ending the contract before both parties have fulfilled their obligations under the terms of the contract.*

*In this article we need to explain the conditions of termination of contract and determine what happens after the contract is terminated.*

*It is recommended to have this article for complex Works and CP is advised to get support from a lawyer to avoid future legal actions.*

The CA can be terminated by either party, in writing, within **[seven days]** of signing the contract.

Termination of contract is possible for this CA under specific conditions as explained below:

1. **Impossibility of Performance:** If it is impossible for one or both parties to fulfil their obligations, the contract can be terminated.
2. **Fraud, Misrepresentation, or Mistake:** If the contract was formed under circumstances that constitute fraud, misrepresentation, or mistake, the contract can be terminated.
3. **Safeguarding:** Safeguarding mismanagement or failure to inform Client of breach could result in termination of services
4. **Health and safety:** Failure to comply with Health and Safety regulations could result in termination of services

# Signatories

*The CA MUST be signed off by the key representative for each organisation in line with schemes of delegation. In some countries it may also be common practice to do this in the presence of a witness for each signatory. It MUST be signed in advance of project work commencing and original copies filed safely by both Parties..*

The undersigned duly authorised representatives of **[Client]** and **[Contractor]** have fully agreed to be bound by this Agreement and its annexes. Executed copies of the signature pages of this Agreement exchanged between the Parties, by facsimile or transmitted electronically in either Image Format Files or Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the Parties waive any rights either may have to object to such treatment.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| [**Client]** | | **[Contractor]** | | **[Government representative]**  *{if required}* | |
| Name: |  | Name: |  | Name: |  |
| Title: |  | Title: |  | Title: |  |
| Date: |  | Date: |  | Date: |  |

*{Attach Annexes}*