



<b>Framework:</b>	<b>Collaborative Delivery Framework</b>
<b>Supplier:</b>	<b>Kier Integrated Services Ltd</b>
<b>Company Number:</b>	<b>00873179</b>
<b>Geographical Area:</b>	<b>South West</b>
<b>Project Name:</b>	<b>Preston Beach Construction</b>
<b>Project Number:</b>	<b>ENVIMSW0002807C</b>
<b>Contract Type:</b>	<b>Engineering Construction Contract</b>
<b>Option:</b>	<b>Option C</b>
<b>Contract Number:</b>	<b>32654</b>
<b>Stage:</b>	<b>Construction</b>

Revision	Status		Originator		Reviewer		Date

## ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework CONTRACT DATA

**Project Name** Preston Beach Construction

**Project Number** ENVIMSW0002807C

This contract is made on 22 October 2021  
between the *Client* and the *Contractor*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 10th day of April 2019 between the *Client* and the *Contractor* in relation to the Collaborative Delivery Framework. The entire agreement and the following Schedules are incorporated into this Contract by reference
- Schedules 1 to 21 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference  
Preston Beach ECC Scope v6

### Part One - Data provided by the *Client*

#### Statements given in all Contracts

##### 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 the secondary Options of the NEC4 Engineering and Construction Contract June 2017.

Main Option	Option C	Option for resolving and avoiding disputes	W2
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Secondary Options

X2: Changes in the law  
X7: Delay damages  
X9: Transfer of rights  
X11: Termination by the *Client*  
X18 Limitation of Liability  
X20: Key Performance Indicators  
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

Construct approximately 110m rock revetment on Preston Beach, Weymouth, Dorset to provide stability to the beach material seaward of the concrete promenade & seawall.

The *Client* is  
Address for communications  
Environment Agency  
Horizon House  
Denery Road  
Bristol  
BS1 5AH

Address for electronic communications

The *Project Manager* is  
Address for communications  
Arcadis LLP  
Rydon House  
Pynes Hill  
Exeter  
EX2 5AH

Address for electronic communications

The *Supervisor* is  
Address for communications  
Environment Agency  
Horizon House  
Deanery Road  
Bristol  
BS1 5AH

Address for electronic communications

The *Scope* is in  
Preston Beach ECC Scope v6

The *Site Information* is in  
Preston Beach\_ENV0002807C Site Info

The *boundaries of the site* are  
Preston Beach - Site Boundary Plans 280921 GL Final

The *language of the contract* is English

The *law of the contract* is  
the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

The period for reply is 2 weeks

The following matters will be included in the Early Warning Register

Early warning meetings are to be held at intervals no longer than 2 weeks

##### 2 The *Contractor's* main responsibilities

The *key dates* and *conditions* to be met are  
*condition* to be met

'none set'

'none set'

'none set'

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

*key date*

'none set'

'none set'

'none set'

4 weeks

**3 Time**

The *starting date* is 22 October 2021

The *access dates* are part of the Site date

The *Contractor* submits revised programmes at intervals no longer than 4 weeks

The *Completion Date* for the whole of the *works* is 28 January 2022

The *Client* is not willing to take over the *works* before the Completion Date

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is 4 weeks

**4 Quality management**

The period after the Contract Date within which the *Contractor* is to submit a quality plan is 4 weeks

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

The *defect correction period* is 2 weeks except that

- The *defect correction period* for is
- The *defect correction period* for is

**5 Payment**

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The *Client* set total of the Prices is £376,075.75

The *interest rate* is 2.00% per annum (not less than 2) above the Base rate of the Bank of England

The *Contractor's share percentages* and the *share ranges* are

	<i>share range</i>		<i>Contractor's share percentage</i>
less than		80 %	0 %
from	80 %	to 120 %	as set out in Schedule 17
greater than		120 %	as set out in Schedule 17

**6 Compensation events**

The place where weather is to be recorded is Isle Of Portland Location: 50.522, -2.454

The *weather measurements* to be recorder for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5mm
- 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:

- 1.
- 2.
- 3.
- 4.
- 5.

The *weather measurements* are supplied by Met Office

The *weather data* are the records of past weather measurement for each calendar month which were recorded at Isle Of Portland Location: 50.522, -2.454 and which are available from Met Office

Assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are

Jan	Jul
Feb	Aug
Mar	Sep
Apr	Oct
May	Nov
Jun	Dec

These are additional compensation events

1. Compensation event for a tidal flood event is defined as when the water level exceeds the predicted tide level by 290mm. The tide gauge station is located Tide Gauge building is located on Commercial Pier adjacent to Weymouth ferry terminal. (50° 36.51'N 2° 26.876'W) SY 6840 7885 Grid reference. Data can be obtained from the National Tidal and Sea level facility.
2. Compensation event for a wave event is defined as a Significant Wave Height (Hmo) 1.75m which is recorded at Preston Beach Data well Directional Wave Rider Mk III Wave measuring buoy (50° 37.36' N 002° 24.85' W) VMO Code 6201007.
3. The presence of an UXO is a Compensation Event

4. If unforeseen ground conditions are found causing delay or additional cost this will be a compensation event.
5. 'not used'

## 8 Liabilities and insurance

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 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

£15,000,000

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

not less than the amount required by law

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

## Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives* of the *Client* are  
Address for communications

Environment Agency  
Horizon House  
Deanery Road  
Bristol  
BS1 5AH

Address for electronic communications

Name  
Address for communications  
Address for electronic communications  
The *Adjudicator* is  
Address for communications  
Address for electronic communications  
The *Adjudicator nominating body* is

'to be confirmed'  
'to be confirmed'  
'to be confirmed'  
The Institution of Civil Engineers

## Z Clauses

### Z1 Correctness of Site Information and other documents

Z1.1 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*.

Z1.2 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 they rely on for the purpose of pricing for, or providing the *works*.

### Z3 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..."

### Z 4 The Schedule of Cost Components

The Schedule of Cost Components is as detailed in the Framework Schedule 9.

### Z 6 Payment for Work

Delete existing clause 11.2 (31) and replace with:

"11.2 (31) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee, not exceeding the forecast provided under clause 20.4 and accepted by the *Client*."

### Z7 *Contractor's* share

After c154.2 and before c154.3, insert the following additional clause:

54.2A If, prior to Completion of the whole of the works, the Price for Work Done to Date exceeds 111% of the total of the Prices, the amount in excess of 111% of the total of the Prices is retained from the Contractor.

### Z10 Payments to subcontractors, sub consultants and

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works. Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these time scales then the *Client* reserves the right to delay payments to the *Contractor* in respect of subcontracted work, services and supplies.

Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the *Contractor's* opportunities to work on framework contracts.

### Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act

The design consultant employed by the *Contractor* is required to fulfil the obligations of the warrantor under the primary contract for design works that they complete. This includes:

Transfer of rights clause Z11

Professional indemnity insurance cover to same cover as that specified for the *Contractor*

Z11.1 The *Client* ('the third party') may in its own right enforce the provisions of this clause, subject to and in accordance with the provisions of the Contracts (Right of Third Parties) Act 1999 and the following provisions:

Z11.1.1 the parties may not rescind or vary any provision(s) of this agreement, including this clause, at any time without the consent of the third party; and

Z11.1.2 each third party's rights against party A under this agreement shall be subject to the same conditions, limitations and exclusions as apply to party B's rights against party A under this agreement.

Z11.2 Except as provided in clause Z11.1, this agreement does not create any right enforceable by any person who is not a party to it (Other Party) under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a other party which exists or is available apart from that Act.

## Z16 Disallowed Costs

Add the following bullets to clause 11.2 (26) Disallowed costs

- was incurred due to a breach of safety requirements, or due to 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.

## Z19 Linked contracts

Delays and additional cost on this contract resulting from the *Contractor's* fault or error on a previous contract on this project or programme will be a Disallowable cost under this contract and not be a Compensation event under this contract.

## Z21 Requirement for Invoice

Add the following sentence to the end of clause 51.1:

The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Project Manager's* certificate.

Delete existing clause 51.2:

51.2 Each certified payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

If a certified payment is late, or if a payment is late because the *Project Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made

## Z22 Resolving Disputes

Delete W2.1

## Z23 Risks and insurance

Replace clause 84.1 with the following

Insurance certificates are to be submitted to the Client on an annual basis.

## Z30 Material Price Volatility

The *Client* recognises the ongoing pricing uncertainty in relation to materials for the period from 1 July 2021 to 30 June 2022 the *Client* will mitigate this additional cost through this clause.

Payment is made per assessment based upon a general average material proportion within assessments, calculated at 40%.

### Z30.1 Defined terms

- The Latest Index (L) is the latest index as issued by the *Client*. The L, which is at the discretion of the Client, is based upon the issued consumer price index ((CPI) based upon the 12-month rate) before the date of assessment of an amount due.
- The Price Volatility Provision (PVP) at each date of assessment of an amount due is the total of the Material Factor as defined below multiplied by L for the index linked to it.
- Material Factor (MF) 40% is used, based on a general average material proportion across our programme. The volatility provision is only associated with material element. No volatility provision is applicable to any other component of costs.

### Z30.2 Price Volatility Provision

Through a Compensation Event the *Client* shall pay the PVP. PVP is calculated as:

$$\text{Assessment} \times \text{MF} \times \text{L} = \text{PVP}$$

If an index is changed after it has been used in calculating a PVP, the calculation is not changed and remains based upon the rate issued by the *Client*. The PVP calculated at the last assessment before 30 June 2022 is used for calculating the price increase after that date.

### Z30.3 Price Increase

Each time the amount due is assessed, an amount for price increase is added to the total of the Prices which is the change in the Price for Work Done to Date for the materials component only (and the corresponding proportion) since the last assessment of the amount due multiplied PVP for the date of the current assessment.

### Z30.4 Compensation Events

The *Contractor* shall submit a compensation event for the PVP on a monthly basis (where applicable) capturing Defined Cost only for the PWDD increase in month. Forecasted costs should only be considered for the June 2022 period compensation event.

Assessment Date	Defined Cost?	Forecasted Cost?
31 July 2021	In period costs only	No
31 August 2021	In period costs only	No
30 September 2021	In period costs only	No
31 October 2021	In period costs only	No
30 November 2021	In period costs only	No
31 December 2021	In period costs only	No
31 January 2022	In period costs only	No
28 February 2022	In period costs only	No
31 March 2022	In period costs only	No
30 April 2022	In period costs only	No
31 May 2022	In period costs only	No
30 June 2022	In period costs only	Forecasted costs for remainder of contract

The Defined Cost for compensation events is assessed using

- the Defined Cost at base date levels for amounts calculated from rates stated in the Contract Data for People and Equipment and
- the Defined Cost current at the date the compensation event was notified, adjusted to the base date by 1+PVP for the last assessment of the amount due before that date, for other amounts.

## Secondary Options

### OPTION X2: Changes in the law

The *law of the project* is the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

### OPTION X7: Delay damages

**X7 only** Delay damages for Completion of the whole of the *works* are £149.03 per day

### OPTION X18: Limitation of liability

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 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

£5,000,000

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

£7,000,000

The *end of liability date* is 6 years after the Completion of the whole of the *works*

### OPTION X20: Key Performance Indicators (not used with Option X12)

The *incentive schedule* for Key Performance Indicators is in Schedule 17.

A report of performance against each Key Performance Indicator is provided at intervals of 3 months.

### Y(UK2): The Housing Grants, Construction and Regeneration Act 1996

The period for payment is 14 days after the date on which payment becomes due

### Y(UK3): The Contracts (Rights of Third Parties Act) 1999

term beneficiary

## 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

Kier Integrated Services Ltd  
81 Fountain Street  
Manchester  
M2 2EE

Address for communications

Address for electronic communications

The *fee percentage* is

Option C

The *working areas* are

The site, Kier offices, and private dwellings of Kier staff.

The *key persons* are

Name (1)

Job

Project Manager

Responsibilities

Project Delivery

Qualifications

Experience

The *key persons* are

Name (2)

Job

Senior Quantity Surveyor

Responsibilities

Commercial Support

Qualifications

Experience

The *key persons* are

Name (3)

Job

Project Delivery

Responsibilities

Project Delivery

Qualifications

Experience

The *key persons* are

Name (4)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

### 2 The Contractor's main responsibilities

The Scope provided by the *Contractor* for its design is in

### 3 Time

The programme identified in the Contract Data is

### 5 Payment

The *activity schedule* is

### Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1)

Address for communications

Hawthorn House  
Emperor Way  
Exeter Business Park  
Exeter  
EX1 3QS

Address for electronic communications

Name (2)

Address for communications

Hawthorn House  
Emperor Way  
Exeter Business Park  
Exeter  
EX1 3QS

Address for electronic communications

Contract Execution

Client execution

Signed under hand by

for and on behalf of the Environment Agency

[Redacted Signature]

Signature

Senior Commercial Officer

Role

Contractor execution

Consultant execution

Signed under hand by

for and on behalf of Kier Integrated Services Ltd

[Redacted Signature]

Signature

Commercial Director

Role