

PRE-CONSTRUCTION AGREEMENT

BETWEEN

Environment Agency

AND

**Kier Construction Limited trading as Kier Construction Western &
Wales**

**FOR THE DELIVERY OF PRE-CONSTRUCTION SERVICES
IN RELATION TO Bridgwater Tidal Barrier – Workstream A – Barrier and
Sitewide Infrastructure**

[]

PRE-CONSTRUCTION AGREEMENT

THIS AGREEMENT is made the 06th day of January 2025

BETWEEN

Environment Agency of Horizon House, Deanery Road, Bristol, BS1 5AH (hereinafter called ("**the Commissioning Organisation**") of the one part

and

Kier Construction Limited trading as Kier Construction Western & Wales of 2nd Floor, Optimum House, Clippers Quay, Salford, M50 3XP (hereinafter called ("**the Provider**") of the other part.

Collectively referred to as "**the Parties**"

WHEREAS

- A) The Provider is a party to the Framework Agreement and the Commissioning Organisation is entitled to enter into Underlying Contracts pursuant to the Framework Agreement.
- B) The Commissioning Organisation and the Provider enter into this Agreement for the provision of the Pre-Construction Services, as more particularly described in Appendix 2 hereto and the Commissioning Organisation is desirous that such Pre-Construction Services should be provided in accordance with the Two-Stage Open Book model under the Framework Agreement.
- C) The Commissioning Organisation has accepted the First Stage Tender submitted by the Provider for the provision of the Pre-Construction Services and the parties agree the Provider shall carry out the Pre-Construction Services in accordance with the terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Framework Agreement except that the following words and expressions shall have the following meanings here:

"Additional Conditions" means that Commissioning Organisation's additional conditions relating to the Construction Contract which are designed to refine and supplement the terms of the Framework Agreement as appended at Appendix 3 and which are yet to be agreed between the Parties;

"Agreement" means this Pre-Construction Agreement between the Commissioning Organisation and the Provider comprising these terms and conditions together with all Appendices attached hereto;

“Change Control Procedures” means the procedures for the control of change to the Specification resulting from a change to the specification for the Works as set out in Appendix 6;

“Construction Act” means the Local Democracy, Economic Development and Construction Act 2009;

“Construction Contract” means the contract for the implementation of the Works in the form specified by the Commissioning Organisation as more particularly described in Appendix 3

Due Date for payment means as provided for in Clause 10

“Emergency” an event or situation which threatens serious damage to national security; or to human welfare and/or the environment in the geographical areas in which performance of the Underlying Contracts takes place;

“Fee” means the fee to be paid to the Provider for the proper performance of the Pre-Construction Services and calculated in accordance with Appendix 5;

“Framework Agreement” means the framework agreement dated 05/04/2023, as amended by the Commissioning Organisation, and entered into between the Provider and the Framework Organisations on their behalf and on behalf of all of the Commissioning Organisations referenced in the Framework Agreement;

“First Stage Tender” means the Provider’s tender for the Pre-Construction Services which is contained in Appendix 4;

“Intellectual Property Rights” or IPR means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom);

“Pre-Construction Agreement” means this Agreement between the Commissioning Organisation and the Provider for the provision of Pre-Construction Services;

“Pre-Construction Documents” means any drawings, plans, designs, diagrams, specifications, technical data models, bills of quantities, reports, calculations or other documents or recorded information whatsoever prepared by or on behalf of the Provider for use by and the benefit of the Commissioning Organisation and its assigns and partners, in connection with this Agreement;

“Pre-Construction Services” means the pre-construction services and Early Works, to be undertaken by the Provider as detailed in the Specification;

“Project Manager” means the Commissioning Organisation’s representative properly authorised to act in performance of the Agreement and whose details shall be notified to the Provider in writing;

“Reasonable Skill, Care and Diligence” means the standard of skill and care set out in the Construction Contract unless specifically stated otherwise; .

“Specification” means the Commissioning Organisation’s specification of the Pre-Construction Services contained in Appendix 2;

“Standards” means any standards, policies and procedures applicable to the Pre-Construction Services as specified by the Commissioning Organisation in the Specification or its Additional Conditions;

“Third Party Documents” means any drawings plans designs diagrams specifications technical data models bills of quantities reports calculations or other documents or recorded information whatsoever which are owned by any third party;

“Underlying Contracts” means those contracts for the delivery of construction works and services called-off under the Framework Agreement, being either a Construction Contract or a Pre-Construction Agreement;

“Works” means the construction works that it is intended will be undertaken by the Provider pursuant to the Underlying Contract.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 the headings are included for convenience only and shall not affect the interpretation of this Agreement;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a gender includes any other gender;

1.2.4 a reference to a ‘person’ includes any individual, firm, partnership, company and any other body corporate;

1.2.5 a reference to a statute, statutory instrument or other subordinate legislation (‘legislation’) is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification; and

1.2.6 a reference to specific standards, codes of practice, guideline, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes thereto.

1.3 In the event of any conflict or discrepancy between the provisions of this Agreement and the Framework Agreement, the conflicting/discrepant provisions of this Agreement will prevail over the conflicting/discrepant provisions of the Framework Agreement and the parties will be excused compliance with the conflicting/discrepant provisions of the Framework Agreement in so far as they apply, or would otherwise have applied to this Agreement.

2 THE PRE-CONSTRUCTION AGREEMENT

2.1 The following documents shall be deemed to form and be read and construed as part of the Pre-Construction Agreement:

2.1.1 These terms and conditions of the Pre-Construction Agreement;

2.1.2 Appendix 1 – The terms and conditions of the Framework Agreement;

2.1.3 Appendix 2 – Mini-Competition Information issued by the Commissioning Organisation, (including award criteria, project information and the Specification for the Pre-Construction Services);

- 2.1.4 Appendix 3 – Commissioning Organisation’s Form of Construction Contract and Additional Conditions;
 - 2.1.5 Appendix 4 – The Provider’s Bid;
 - 2.1.6 Appendix 5 – Fee Schedule (in the form specified by the Commissioning Organisation);
 - 2.1.7 Appendix 6 – Change Control Procedure;
 - 2.1.8 Appendix 7 – Not Used
- 2.2 Should there be any ambiguity or conflict in or between the documents comprising this Contract, the priority of the documents is in accordance with the following sequence:
- 2.2.1 These terms and conditions of the Pre-Construction Agreement
 - 2.2.2 Commissioning Organisation’s Form of Construction Contract and Additional Conditions
 - 2.2.3 Mini-Competition Information
 - 2.2.4 The terms and conditions of the Framework Agreement
 - 2.2.5 The Provider’s Bid
 - 2.2.6 Fee Schedule
 - 2.2.7 any other Contract Appendix forming part of This Agreement and the order of precedence of such documents shall be decided by the Project Manager
- 2.3 This Agreement shall commence (the “Commencement Date”) on the date upon which the Provider commences performance of the Pre-Construction Services or the execution of this Agreement (whichever is earlier) and shall continue in force until satisfactory completion of the Pre-Construction Services unless terminated in accordance with this Agreement.

3 COMPLIANCE WITH THE FRAMEWORK AGREEMENT

- 3.1 Subject to clause 1.3 above, both parties agree that they will comply with the terms of the Framework Agreement and will work together in an open, co-operative and collaborative manner and in the spirit of mutual trust and respect in performance of this Agreement.

4 STANDARDS

- 4.1 The Provider shall at all times meet the Framework Standards and the Standards during the term of this Agreement and the term of any subsequent Construction Contract between the Parties in connection with the Works and projects to which this Agreement relates.
- 4.2 The Commissioning Organisation shall be satisfied that Underlying Contracts performed by the Provider under the Framework have been satisfactorily completed in accordance with their terms or, where that has not occurred, the reason or reasons why that has not occurred in relation to any such contract, will not recur in the performance of any Underlying Contract to be awarded by the Commissioning Organisation under the Framework Agreement.
- 4.3 The Commissioning Organisation may assess whether the Provider meets or continues to meet the Standards during the Mini-Competition process and at any time during the term of this Agreement and any subsequent Construction Contract entered into between

the Parties. The Parties acknowledge that failure by the Provider to maintain the Framework Standards in accordance with the terms of the Framework Agreement may render the Provider ineligible for participation in a Mini-Competition.

5 PROVISION OF THE PRE-CONSTRUCTION SERVICES

- 5.1 The Provider shall provide the Pre-Construction Services in conformity in all respects with the provisions of this Agreement and as may be agreed between the Parties. The Provider shall maintain the organisational and technical ability, reliability and capacity to provide the Pre-Construction Services and Construction Contract in accordance with this Agreement. Where appropriate, the Commissioning Organisation may satisfy itself that the Provider continues to meet the Minimum Standards and Standards by:
 - 5.1.1 monitoring the Provider's performance under past or on-going Underlying Contracts performed by the Provider pursuant to the Framework Agreement or any other contract between the Provider and the Commissioning Organisation to satisfy itself that such performance has been or is being carried out satisfactorily and in accordance with the terms of those contracts;
 - 5.1.2 where there is evidence that the performance of the Provider under other Underlying Contracts or any other contract between the Provider and the Commissioning Organisation has not been carried out to the expected standards, satisfying itself that the reasons for any such failure will not recur under this Agreement or the Construction Contract.
- 5.2 The Provider shall perform all of its obligations under this Agreement in a timely manner and shall use reasonable endeavours to provide the Pre-Construction Services in accordance with the outputs and due dates identified in the Specification or as agreed by the Parties and meet or exceed the Minimum Standards.
- 5.3 The Provider warrants that the Pre-Construction Services shall be provided with all Reasonable Skill, Care and Diligence. The Provider further warrants that the Pre-Construction Services meet and shall continue to meet the requirements of the Commissioning Organisation as set out in the Specification (subject to the exercise of Reasonable Skill, Care and Diligence) and shall comply with all relevant statutory requirements.
- 5.4 The Provider shall if required to do so attend all meetings convened by the Commissioning Organisation subject to reasonable notice being given, in relation to the provision of the Pre-Construction Services.
- 5.5 The Provider shall not be excused liability under this Clause 5 by reason of the fact that he may have exercised all due skill and care in the selection of those to whom he has delegated or sub-contracted the Pre-Construction Services.
- 5.6 If given reasonable notice that it is considered necessary in the opinion of the Commissioning Organisation, the Provider shall procure that any sub-contractors appointed in relation to the performance of the Pre-Construction Services shall sign a confidentiality undertaking, in a form to be agreed by the Commissioning Organisation, the Provider and sub-contractor, before commencing work in connection with the Pre-Construction Services.

6 HARMONISATION OF SUPPLY CHAIN

- 6.1 Each Provider shall implement the procedures to establish effective relationships with other relevant persons including without limitation suppliers, and the Commissioning Organisation's own consultants, contractors and agents engaged in the implementation of the construction projects to which this Agreement relates.
- 6.2 The Provider shall where required participate in joint initiatives with other Providers to establish a common and harmonised supply chain. The common and harmonised supply chain may be designed to secure:
- 6.2.1 a clear methodology for surveys, design (as applicable), manufacture, supplies, installation, delivery and other activities including achieving sustainability;
 - 6.2.2 best value, improved prices, warranties and other added value;
 - 6.2.3 integrated briefs and a consistent approach to ordering;
 - 6.2.4 structures of joint performance reviews agreed KPIs and targets;
 - 6.2.5 long-term commitments in the achievement of agreed KPI targets;
 - 6.2.6 the operation of full processes and procedures for continuous improvement for the Works;
 - 6.2.7 terms and conditions reasonably acceptable to the Providers and other relevant persons including without limitation any suppliers;
 - 6.2.8 reduced number of material components used and move towards standardisation to reduce subsequent maintenance
 - 6.2.9 the application of any discount that the Provider may receive in relation to any project or Works carried out in its Lot, to all works carried out by the Provider in another Lot; and
 - 6.2.10 the delivery of efficiency savings.

In order to further the objectives in clause 6.2 the Provider shall provide and share such information regarding its own supply chain (subject always to the duty of confidentiality).

7. CHANGES TO PRE-CONSTRUCTION SERVICES

- 7.1 The Commissioning Organisation shall be entitled by written notice to vary the Specification and the Provider shall comply with such notice provided that if within 14 days of receiving the notice the Provider considers that compliance with the notice will lead to extra cost or delay in providing the Pre-Construction Services it shall give notice of that cost or delay to the Commissioning Organisation and the parties shall use all reasonable endeavours, acting in good faith, to agree on an appropriate increase in the time for provision of the Pre-Construction Services and/or an appropriate increase in the Fee. In the absence of agreement between the Parties within 28 days of the Provider's notice, the Provider shall be entitled to a reasonable extension of time for provision of the Pre-Construction Services and the extra cost (if any) shall be valued at fair rates and prices in accordance with the "Change Control Procedure" set out in Appendix 6.

- 7.2 Where the Commissioning Organisation or the Provider sees a need to vary the Pre-Construction Agreement or Underlying Contract as a result of a change to the Specification of the Works the Commissioning Organisation may at any time request, and the Provider may at any time recommend, such change only in accordance with the Change Control Procedure.
- 7.3 Neither the Commissioning Organisation nor the Provider shall unreasonably withhold its agreement to any change.
- 7.4 Until such time as a change to the Specification is made in accordance with the Change Control Procedure, the Provider shall, unless otherwise agreed in writing, continue to supply the Pre-Construction Services specified in the Specification as if the request or recommendation had not been made.
- 7.5 Any discussions which may take place between the Commissioning Organisation and the Provider in connection with a request or recommendation before the authorisation of a resultant change to the Specification shall be without prejudice to the rights of either Party.
- 7.6 Any work undertaken by the Provider, its sub-contractors or agents which has not been authorised in advance by a change to the Specification and which has not been otherwise agreed in accordance with the provisions of Clause 7.2 shall be undertaken entirely at the expense of the Provider.

8 PRE-CONSTRUCTION DOCUMENTS

- 8.1 Where necessary for the performance of the Pre-Construction Services, the Provider shall prepare all the Pre-Construction Documents as is its responsibility under this Agreement as set out in the Specification.
- 8.2 The Provider warrants that the Pre-Construction Documents shall be prepared with Reasonable Skill, Care and Diligence and shall be in accordance with the First Stage Tender document and the Commissioning Organisation's requirements as set out in the Specification.
- 8.2A Notwithstanding any other provision of this contract, nothing in this Contract shall be construed as imposing a fitness for purpose obligation or any fitness for purpose liability in respect of the design of the Works or selection of materials or any other standard than that which is expressly stated in clause 8.2
- 8.3 The Provider shall provide to the Project Manager a copy of all the Pre-Construction Documents produced pursuant to this Agreement both electronically and in hard copy, on completion of each output set out in Appendix 4.
- 8.4 The Parties shall not enter into the Construction Contract until:
- 8.4.1 the Project Manager has examined the Pre-Construction Documents and has confirmed in writing that he does not intend to raise any questions thereon; or
- 8.4.2 the Project Manager has confirmed in writing that the questions he has raised about the Pre-Construction Documents have been answered to his satisfaction.

- 8.5 Nothing in this clause shall relieve the Provider of any liability under this Agreement for any defect in any Pre-Construction Document, or for any inconsistency or lack of co-ordination between any Pre-Construction Documents.
- 8.6 The Provider, shall procure the right for the Commissioning Organisation to possess, make use of and take copies of the Third Party Documents for the purposes of this Agreement and/or the Underlying Contract.
- 8.7 The Commissioning Organisation shall supply to the Provider, without charge and in such reasonable time as not to delay or disrupt the performance by the Provider of the Pre-Construction Services, all necessary and relevant data and information in the possession of the Commissioning Organisation or its servants, agents or sub-contractors and the Commissioning Organisation shall give and shall procure that such persons give such assistance as shall reasonably be required by the Provider in the performance of the Pre-Construction Services.
- 8.8 The Commissioning Organisation shall give a decision on all sketches, drawings, reports, recommendations, tender documents and other matters properly referred to it by the Provider in such reasonable time as not to delay and disrupt the performance of the Pre-Construction Services under this Agreement.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in the Pre-construction Documents and any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- 9.1.1 furnished to or made available to the Provider by or on behalf of the Commissioning Organisation shall remain the property of the Commissioning Organisation; and/or
- 9.1.2 prepared by or on behalf of the Provider for use, or intended use in relation to the performance of the Agreement and the Construction Contract shall vest in the Commissioning Organisation and the Provider shall not, and shall procure that the Provider's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior consent of the Commissioning Organisation, use or disclose any such IPR, or any confidential information (whether or not relevant to the Agreement) which the Provider may obtain in performing the Agreement except information which is in the public domain.
- 9.2 For the purposes of Clause 9.1.2, where the Pre-Construction Documents contain embedded IPR that are deemed to be owned by the Provider or its servants agents, suppliers and sub-contractors, the Provider hereby grants to the Commissioning Organisation, or shall procure the direct grant to the Commissioning Organisation of a perpetual, worldwide, royalty-free, non-exclusive and irrevocable licence to use (which shall include the right to load, store, copy, publish, modify, adapt, exploit, enhance, compile, distribute and translate) the Provider or third party IPR embedded in the Pre-Construction Documents, along with any operating instructions and other documents and tools necessary for the Commissioning Organisation's free and unrestricted use of the Pre-Construction Documents.
- 9.3 The Commissioning Organisation shall be entitled to sub-license the rights granted to it pursuant to Clause 9.2 provided that:

- 9.3.1 the sub-licence is on terms no broader than those granted to the Commissioning Organisation; and
 - 9.3.2 the sub-licence authorises the third party to use the rights licensed in Clause 9.2 and to sub-licence such rights only for purposes relating to the Framework Agreement, the Underlying Contracts; or for any purpose relating to the exercise of the Commissioning Organisation's business or function; or where this is necessary for the use or to obtain the benefit of the Pre-Construction Documents; and
 - 9.3.3 no warranty is given by the Provider as to the suitability of the Pre-Construction Documents for any purpose which is not connected to the Underlying Contracts.
- 9.4 The Commissioning Organisation shall be entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 9.2, to any body which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Commissioning Organisation.
- 9.5 It is a condition of the Agreement that the provision of Pre-Construction Services will not infringe any Intellectual Property Rights of any third party and the Provider shall during and after the completion of the Underlying Contracts, on written demand indemnify and keep indemnified the Commissioning Organisation against all actions, proceedings, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Commissioning Organisation may suffer or incur as a result of or in connection with any breach of this clause 9, except where any such claim relates to:
- 9.5.1 designs furnished by the Commissioning Organisation;
 - 9.5.2 the use of data supplied by the Commissioning Organisation which is not required to be verified by the Provider under any provision of the Agreement.
- 9.6 At the termination or expiry of the Agreement the Provider shall at the request of the Commissioning Organisation immediately return to the Commissioning Organisation all materials, work or records held, including any back up media relating to this Agreement.
- 9.7 The Commissioning Organisation recognises that during the performance of this Agreement, the Provider may conceive or develop intellectual ideas, designs and know-how which the Provider shall be free to use in the furtherance of his normal business, and nothing in this Agreement shall prevent the Provider from performing similar tasks for another customer provided that all work for that other Provider is done *ab initio*.

Use of Commissioning Organisation IPR

- 9.8 The Specification and Underlying Contracts may contain model products, drawings and templates in which IPR owned by the Commissioning Organisation and third parties (including other Commissioning Organisations) subsist.
- 9.9 The Provider shall not, and shall procure that its servant, agents, suppliers and sub-contractors shall not copy, publish, modify, adapt, exploit, enhance, compile, distribute and generally use the models drawings and templates referred to in Clause 9.8 for the Provider's own purposes (whether commercial or otherwise) without the prior written

consent of the Commissioning Organisation or the owner of the IPR. Such consent may be subject to the payment of royalties to the owner of the IPR.

- 9.10 The provisions of Clause 9 shall apply during the term of the Agreement and indefinitely after its expiry or termination.

10 PAYMENT PROCEDURES

- 10.1 In consideration of the provision of the Pre-Construction Services in accordance with this Agreement the Commissioning Organisation agrees to pay to the Provider the Fee in accordance with the payment schedule set out in Appendix 5 to this Agreement. The Fee excludes Value Added Tax which shall be paid at the prevailing rate.
- 10.2 The Due Date for payment of the Fee shall be the day, on a monthly basis, 7 (seven) days after the date of receipt by the Commissioning Organisation (or his representative nominated for that purpose) of the Provider's valid invoice for sums to which the Provider has become entitled and as agreed with the Commissioning Organisation, whether in accordance with the schedule in Appendix 5 or otherwise. The Provider's invoice shall be deemed to be an Interim Application (as defined below) for the purposes of the Construction Act.
- 10.3 In relation to payment of the Fee, the Provider shall send an invoice ("Interim Application") to the Project Manager or a person nominated by the Commissioning Organisation for that purpose, which Interim Application shall:
- 10.3.1 be submitted no later than 1 month after the Commencement Date of the Pre-Construction Services and thereafter on a monthly basis, or where applicable, in accordance with the milestones and outputs specified by the Commissioning Organisation in Appendix 5;
 - 10.3.2 state the sum that the Provider considers will become due on the Due Date in respect of the payment for the period and the basis on which that sum is calculated;
 - 10.3.3 include all supporting documentation reasonably required for the computation of any amount due.
- 10.4 Not later than 5 days after the Due Date, the Commissioning Organisation shall give a written notice ("the Interim Certificate") to the Provider which shall specify what he considers to be the total value as at the Due Date of the payment to be made in accordance with the Agreement and which shall cover:
- 10.4.1 work properly executed, including amounts ascertained or agreed; and
 - 10.4.2 where applicable, any materials and goods which have reasonably been used in the provision of the Pre-Construction Services.
- 10.5 If an Interim Certificate is not issued by the Commissioning Organisation in accordance with clause 10.4, the sum to be paid by the Commissioning Organisation shall, subject to any notice subsequently given by it under Clause 10.7, be the sum stated in the Interim Application.
- 10.6 Subject to any other rights powers and remedies it may have under this Agreement, the Commissioning Organisation shall be entitled to withhold (or where appropriate, reduce) payment of sums due under this Agreement in the following circumstances:

- 10.6.1 the Pre-Construction Services or any part of them are not provided to the agreed Standards, or in accordance with the Specification (subject to the exercise of Reasonable Skill, Care and Diligence), this Agreement or the terms of the Framework Agreement (subject to the Provider's duty to rectify any defect in the Pre-Construction Services);
- 10.6.2 where the Pre-Construction Services or any part of them fall behind the approved programme provided that the delay was not caused by the acts or omissions of the Commissioning Organisation, the Commissioning Organisation shall be entitled to impose Delay Damages as defined and calculated under the Delay Damages under the ECC Secondary Option X7 but for the purposes of this Agreement the Delay Damages shall be limited to £0.01/day ;
- 10.6.3 Reports and monitoring information are not delivered as specified by the Commissioning Organisation;
- 10.6.4 the Provider is subject to an Insolvency Event (as defined in the Framework Agreement).
- 10.7 If the Commissioning Organisation intends to pay less than the sum stated as due in the Interim Certificate or the Interim Application as the case may be, the Project Manager or a person authorised by him, shall no later than 5 days before the Final Date for Payment (as defined in the Construction Act) give the Provider notice (a **"Pay Less Notice"**) of that intention, specifying any amount proposed to be withheld and/or deducted from the amount due, the ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground, and the sum which the Commissioning Organisation considers to be due to the Provider at the date it gives the Pay Less Notice. Where the Commissioning Organisation serves a Pay Less Notice, the payment to be made on or before the Final Date for Payment shall be not less than the amount stated in the Pay Less Notice.
- 10.8 If the Commissioning Organisation fails to pay the Fee, or any part of it, properly due to the Provider under this Agreement by the Final Date for payment, the Provider may charge simple interest on all outstanding sums at a rate of 2% over the base rate from time to time of Barclays Bank plc (or such other reasonable interest rate as the Parties may agree) for the period until such payment is made.
- 10.9 The Parties agree that the Final Date for payment of any monies due to the Provider from the Commissioning Organisation shall be 21 days after the Due Date

11 GUARANTEES

NOT USED

12 TERMINATION

- 12.1 Subject to any other rights and remedies under this Agreement, either Party may by notice in writing at any time terminate this Agreement with immediate effect if the other Party is in breach of any of its obligations under the Agreement and fails to remedy such breach within a reasonable period or the period specified by the other Party after being advised of the breach.

12.2 The Commissioning Organisation shall be entitled by giving not less than one month's notice in writing to the Provider to:

12.2.1 terminate this Agreement; or

12.2.2 suspend the provision of the Pre-Construction Services and upon any such suspension the Provider shall be entitled to such part of the Fee as is commensurate with the Pre-Construction Services rendered by the Provider up to the date of such suspension and any amounts due pursuant to clause 12.6.2 PROVIDED THAT:

12.2.2.1 if the Commissioning Organisation so requires at any time within the period of 6 months of a suspension of the Agreement under this clause, the Provider shall resume the performance of the Pre-Construction Services under this Agreement; or

12.2.2.2 if any such suspension extends beyond the period of 6 months the Provider shall not be required to resume the Pre-Construction Services under the Agreement other than on terms to be agreed between the Parties.

12.3 subject to Clause 10.8, the Provider may, upon giving 7 days' written notice, suspend the provision of the Pre-Construction Services if it is entitled to terminate this Agreement under Clause 12.1 for failure by the Commissioning Organisation, to pay undisputed Fees in accordance with this Agreement. The Provider shall resume the performance of the Pre-Construction Services as soon as reasonably practicable on settlement of the outstanding balance, provided always that the Commissioning Organisation has paid the Contractor any remobilisation costs properly and necessarily incurred by him as a result.

12.4 Subject to Clause 12.5 below, termination of this Agreement shall have no effect on the rights, remedies or liabilities of either Party already accrued prior to the date on which termination takes effect.

12.5 Under no circumstance shall the Provider be entitled to recover any loss of profit or other direct or indirect losses in respect of any Pre-Construction Services that have not been performed.

12A EXPIRY

12A.1 This Agreement shall automatically terminate upon 1) execution, dating and entering into the Construction Contract or 2) termination in accordance with the PCSA.

13 SUSPENSION FOR SPECIFIC BREACHES

13.1 The Provider shall not do anything which:

13.1.1 may place the Commissioning Organisation in breach of any Health and Safety requirement;

- 13.1.2 may cause the Commissioning Organisation to suffer significant economic loss due to any breach of this agreement by the Provider;
- 13.1.3 may cause the Commissioning Organisation to suffer damage to its reputation due to any breach of this agreement by the Provider;
- 13.1.4 may cause the Commissioning Organisation to be in breach of or to suffer delays in meeting its statutory duties

which may occur as a result of the Provider's or its supply chain's poor performance; delays; or Insolvency Event or any other material failure to comply with this Agreement, relevant legislation or good working practice.

- 13.2 If the Commissioning Organisation, acting reasonably considers that there is or is likely to be a breach of clause 13.1 by the Provider or its subcontractors; or if there is any risk to any person; or if there is an accident or other event which in the opinion of the Commissioning Organisation necessitates urgent remedial action, or if the Provider's circumstances or past performance under the Framework Agreement leads to the reasonable conclusion that the Provider no longer meets the Standards and Minimum Standards relating to financial standing, capacity and reliability, the Commissioning Organisation:
 - 13.2.1 shall be entitled to suspend the performance of Pre-Construction Services or any task or part thereof. The Provider shall not resume provision of the services until the Commissioning Organisation is satisfied that the failure or non-compliance will be rectified. Any such suspension shall not absolve the Provider from meeting other obligations under any on-going Underlying Contract; and/or
 - 13.2.2 may inform the Provider in writing what action it requires the Provider to take to remedy that breach or abate that risk and may also state any timescales within which such steps are to be taken; and/or
 - 13.2.3 may itself take such steps or remedial action (or pay or employ others to do the same) as may in the reasonable opinion of the Commissioning Organisation be necessary to remedy that breach or abate that risk, provided that it shall tell the Provider of the action required as soon as it is reasonably practicable to do so. If such steps or remedial action are necessary because of the default of the Provider then the reasonable extra costs incurred by the Commissioning Organisation will be payable by the Provider and recovered as a debt or in such other way as the Commissioning Organisation deems fit; and/or
- 13.3 Other remedies the powers of a Commissioning Organisation pursuant to the preceding clauses are in addition to its ability to obtain any other remedy for any breach or non-observance of this Agreement by the Provider. The Commissioning Organisation shall be entitled to recover from the Provider all reasonable extra costs and expenses incurred by the Commissioning Organisation as a result of the Provider's breach or other non-observance of the Agreement.
- 13.4 The Commissioning Organisation shall mitigate any losses or delays to the Specification.

14 BUSINESS CONTINUITY AND DISASTER RECOVERY

- 14.1 The Provider shall have in place procedures and arrangements to ensure continuity of business processes and operations following any major failure or disruption of any element of the Pre-Construction Services or Works and their recovery in the event of a Disaster.
- 14.2 In the event of emergencies arising from a Disaster, wherever and however arising, the Provider shall fully co-operate with the Commissioning Organisation in meeting the provisions of the Commissioning Organisation's emergency plan and in the exercises of the Organisation's duties under the Civil Contingencies Act 2004 as amended.

15 INSURANCE

- 15.1 The Provider shall take out and maintain with reputable insurers, public liability insurance, employers liability insurance cover as required by the Framework Agreement or where the Commissioning Organisation has specified different levels of insurance, in accordance with the levels specified in the Mini-Competition documentation..
- 15.2 Unless stated otherwise in the Mini-Competition documentation or Specification, (which may specify an increase in the required level of insurance), the Provider shall maintain the professional indemnity insurance upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers on the basis and in an amount not less than that stated in the Framework Agreement or the Mini-Competition documentation, provided always that such insurance is available at commercially reasonable rates. The Provider must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers. Where in the Mini-Competition documentation the minimum level of PI insurance is varied (having due regard to the complexity and risks associated with a project), the limitation of liability shall be adjusted accordingly.
- 15.3 If, without the approval of the Commissioning Organisation the Provider fails to effect and maintain any insurance that it is required to effect and maintain under the Underlying Contract or the Framework Agreement, or obtains a different policy of insurance or fails to provide a copy of insurances or certificates when required to do so, the Commissioning Organisation may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so from any payment due to the Provider under this Agreement or the Construction Contract, or recover such sum from the Provider as a debt.
- 15.4 The Provider shall not without the prior written approval of the Commissioning Organisation settle or compromise with the insurers any claim which the Provider may have against the insurers and which relates to a claim by the Commissioning Organisation against the Provider nor by any act or omission lose or prejudice the Provider's right to make or proceed with such a claim against the insurers
- 15.5 The Provider shall immediately inform the Commissioning Organisation if the professional indemnity insurance ceases to be available at rates and on terms that it considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the Provider's own claims record or other acts, omissions, matters or things particular to the Provider shall be deemed to be within commercially reasonable rates.
- 15.6 The above obligation in respect of professional indemnity insurance shall continue for a minimum of 12 years notwithstanding suspension, expiry or termination of this

Agreement for any reason whatsoever, including (without limitation) breach by the Commissioning Organisation.

- 15.7 Where the Mini-Competition documentation requires public liability insurance to be obtained in the joint names of the Provider and the Commissioning Organisation but the terms of the relevant insurance policy are such that the Provider is unable to effect insurance jointly, the Provider ensures that the policy includes an "Indemnity to Principal" provision in standard insurance industry terms.
- 15.8 Nothing in this clause shall relieve the Provider from any of its obligations and liabilities under this Agreement

16 DISCRETION TO PROCEED WITH THE WORKS

- 16.1 The Commissioning Organisation shall have absolute discretion whether or not to proceed with the Works, with or without the Provider. Upon completion of the Pre-Construction Services or, at the sole discretion of the Commissioning Organisation, prior to such completion, the Commissioning Organisation shall notify the Provider that:

16.1.1 it has decided not to proceed with the Works; or

16.1.2 it intends to enter into the Construction Contract for the Works with the Provider; or

16.1.3 it intends to enter into a Construction Contract with another provider. In the event that the Commissioning Organisation exercises this option the Provider under this Pre-Construction Agreement shall be entitled to be paid any balance in respect of the execution of the Pre-Construction Services and in accordance with Appendix 5

- 16.2 Where the Commissioning Organisation notifies the Provider that it intends to enter into the Construction Contract with the Provider then both parties shall execute all such documents as are necessary to enable the Provider to proceed with the Works in accordance with the Construction Contract.

- 16.3 On the execution and completion of the Construction Contract, the parties' respective rights and liabilities in respect of all matters with which this Agreement is concerned shall be subsumed into and be subject to the Construction Contract. This Agreement shall not be superseded by the execution of any construction contract for the Works with another provider or contractor and the Provider shall continue to carry out the Pre-Construction Services diligently and in a timely manner until they are completed.

17 DISPUTE RESOLUTION

- 17.1 The parties confirm and agree that if any dispute or difference arises between them in relation to this Agreement such dispute or difference shall be resolved in accordance with the dispute resolution provisions of the Framework Agreement.

18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 18.1 None of the provisions of this Agreement are intended to or will operate to confer any benefit (pursuant to the Contract (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Agreement.

19. LIABILITY

- 19.1 Without affecting any other limitation in this Agreement, the liability of the Provider under or in connection with this Agreement, the Pre-Construction Services supplied by the Provider in connection with this Agreement shall be limited to [the Fee / [£] in the aggregate. This limit shall apply howsoever that liability arises including, without limitation, any liability arising by breach of contract, tort or delict, breach of statutory duty, in restitution and/or arising out of or in connection with the termination of the Provider's employment under this Agreement, provided that this Clause 19.1 shall not exclude or limit the Provider's liability for death or personal injury caused by the Provider's negligence, fraud or fraudulent misrepresentation, or as otherwise prohibited by law.

20. **GOVERNING LAW**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

21. **JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

IN WITNESS whereof the Commissioning Organisation and the Provider have caused this Agreement to be signed with the intention that it shall have effect as a Deed.

Signed for and on behalf of the Provider acting by

[Redacted Signature]

.....
Director

[Redacted Signature]

Signature applied in the presence of:

[Redacted Signature]

Witness' Signature [Redacted Signature]

Witness' Name... [Redacted Name]

Witness' address.....Building 3000 Cambridge Research Park Waterbeach CB25 9PD.....

Signed as a deed by [Redacted Signature]
Commissioning Organisation:

for and on behalf of the

[Redacted Signature]

.....
Authorised Signatory

Role: Senior Managing Lawyer

In [Redacted Signature]

Signature

Name: [Redacted Name]

Role: Costs Manager

Address: c / o Manley House, Kestrel Way, Exeter, EX2 7LQ

APPENDICES

- Appendix 1 – The terms and conditions of the Framework Agreement;**
- Appendix 2 – Mini-Competition Information issued by the Commissioning Organisation, (including award criteria, project information and the Specification for the Pre-Construction Services);**
- Appendix 3 – Commissioning Organisation’s Form of Construction Contract and Additional Conditions;**
- Appendix 4 – The Provider’s Bid;**
- Appendix 5 – Fee Schedule (in the form specified by the Commissioning Organisation);**
- Appendix 6 – Change Control Procedure;**
- Appendix 7 – Not Used**

Appendix 1 FRAMEWORK AGREEMENT

Southern Construction Framework



Lot 1
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Appendix 2 – MINI-COMPETITION INFORMATION

Reservation of the following long-lead plant, equipment, materials and other facilities to be delivered and made available as detailed within the Kier Bridgwater Tidal Barrier Tender Programme (Element A) Date 14-Nov-25:

Tie-Bars:

As detailed in Document Reference: Bridgwater Tidal Barrier Tie-Bar Supported Bypass Channel and Cofferdam - Earthwork & Piling Specification - ENVIMSW002039-KIE-ZZ-3TBS-SP-C-0003 APPENDIX 6/10: GROUND ANCHORAGES, CRIB WALLING AND GABIONS Section 4 - Tie Bars.

To be provided as detailed in the Kier Construction Programme submitted, Activity MIL-1250 Tie Rods Procurement in place and delivered to site 10-Jul-25.

300t Crawler Crane Reservation:

Red7 Crane on the Jack-Up Barge

As detailed in the Kier Construction Programme submitted,

Activity MIL-1100 300t Crawler Crane delivered on site and available for construction 12-Mar-25

Piling Hammer Reservation:

As detailed in the Kier Construction Programme submitted, Activity

MIL-1120 Piling Hammer delivered to site and available for construction 12-Mar-25

Leader Rig Reservation:

As detailed in the Kier Construction Programme submitted, Activity

MIL-1170 Leader Rig delivered to site and available for construction 14-Mar-25

Jack Up Barge (400t) Reservation:

As detailed in the Kier Construction Programme submitted, Activity

MIL-1180 400t Jack Up Barge (JUB) delivered on site and available for construction 20-03-25 subject to confirmed programme.

Main Hub Office Reservation:

Modular site accommodation suitable to accommodate 100 desk spaces - subject to confirmed specified requirements as detailed in the Kier Construction Programme submitted, Activity

MIL-1190 Main Hub Office Procurement in place and delivered to site by 03-04-25

For installation and fit-out ready for occupation by the 12-05-25

Offsite Laydown for Pile Storage

Leasing of 2.5 acres of pile storage area located in the local area of the Tidal Barrier with the availability of the storage to align to the pile delivery schedule and planned access date.

Activity X1040 Planned Access Date 24-Feb-25.

Offsite Overflow Parking

Upfront payment for the provision of 60 additional car park spaces at Morrisons Bridgwater Euro Car Park via prepaid season tickets for a period of 6 months.



ENVIMSW002039-KI
E-ZZ-3TBS-SP-C-000:

Appendix 3 – FORM OF CONSTRUCTION CONTRACT & ADDITIONAL CONDITIONS

**The form of Construction Contract is the NEC4 Engineering and Construction
Contract Option C and subject to agreement for the main contract.**



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Appendix 4 – PROVIDER’S BID

Substantively the Provider’s bid as issued via the Atamis portal, wubject to clarifications and agreed revisions thereof vis the Atamis portal.

Appendix 5 – FEE SCHEDULE

Plant, Equipment & Materials Reservation	£
Tie Rods deposit	
300t Crane Reservation	
Piling Hammer Reservations	
Leader Rig Reservations	
Jack Up Barge (400t) Reservations	
Other Reservations and Deposits	
Main Hub Office deposit	
Overflow car parking deposit	
Pile storage facility deposit	
Net Cost	
Total £	868,594.65

Appendix 6 - CHANGE CONTROL PROCEDURES

1. Principles

Where the Commissioning Organisation or the Provider see a need to change the Specification as a result of a change to the specification of the Works the Commissioning Organisation may at any time request, and the Provider may at any time recommend, such change only in accordance with the formal Change Control Procedure (CCP) as set out at paragraph 2.

- 1.2 Neither the Commissioning Organisation nor the Provider shall unreasonably withhold its agreement to any change.
- 1.3 Until such time as a change to the Specification is made in accordance with the Change Control Procedure, the Provider shall, unless otherwise agreed in writing, continue to supply the Pre-Construction Services specified in the Specification as if the request or recommendation had not been made.
- 1.4 Any discussions which may take place between the Commissioning Organisation and the Provider in connection with a request or recommendation before the authorisation of a resultant change to the Specification shall be without prejudice to the rights of either party.
- 1.5 Any work undertaken by the Provider, its sub-contractors or agents which has not been authorised in advance by a change to the Specification and which has not been otherwise agreed in accordance with the provisions of paragraph 1.3 shall be undertaken entirely at the expense and liability of the Provider.

2. Procedures

- 2.1 All requests shall be considered by appropriate representatives of the Commissioning Organisation and the Provider.
- 2.2 Discussion between the representatives of the Commissioning Organisation and the Provider concerning a change to the Specification shall result in any one of the following:
 - 2.2.1 no further action being taken;
 - 2.2.2 a request to change the Specification by the Commissioning Organisation, or
 - 2.2.3 a recommendation to change the Specification by the Provider.
- 2.3 Where a written request for a change is received from the Commissioning Organisation, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note (CCN) signed by the Provider to the Commissioning Organisation within two weeks of the date of the request.
- 2.4 A recommendation to change by the Provider shall be submitted direct to the Commissioning Organisation in the form of two copies of a CCN signed by the Provider at the time of such recommendation.

2.5 Each CCN shall contain:

- 2.5.1 the title of the change;
- 2.5.2 the originator and date of the request or recommendation for the change;
- 2.5.3 the reason for the change;
- 2.5.4 full details of the change including any specifications;
- 2.5.5 the price, if any, of the change;(This should be expressed as an “Addition” or “Omission”)
- 2.5.6 a timetable for implementation together with any proposals for acceptance of the change;
- 2.5.7 a schedule of payments if appropriate;
- 2.5.8 details of the likely impact, if any, of the change on other aspects of the Specification including but not limited to:
 - 2.5.8.1 the timetable for the provision of the Pre-Construction Services;
 - 2.5.8.2 the period of this Agreement;
 - 2.5.8.3 the personnel to be provided;
 - 2.5.8.4 the Fees;
 - 2.5.8.5 the payment profile;
 - 2.5.8.8 performance levels;
 - 2.5.8.9 working arrangements;
 - 2.5.8.10 other contractual issues;
- 2.5.9 the date of expiry of validity of the CCN; and
- 2.5.10 provision for signature by the Commissioning Organisation and by the Provider.

2.6 For each CCN submitted the Commissioning Organisation shall, within the period of the validity of the CCN:

- 2.6.1 allocate a sequential number to the CCN;
- 2.6.2 evaluate the CCN and, as appropriate:
 - 2.5.2.1 request further information, or
 - 2.5.2.2 arrange for the two copies of the CCN to be signed by or on behalf of the Commissioning Organisation and return one of the copies to the Provider; or

2.5.2.3 notify the Provider of the rejection of the CCN.

- 2.7 If the Provider considers that the preparation of a CCN, requested by the Commissioning Organisation, would necessitate significant allocation of resources over and above those stated in the Specification the Provider will notify the Commissioning Organisation accordingly and, on agreement by the Commissioning Organisation, the Provider will make a proposal for a paid study of the cost and implications of producing the required CCN. Pending the Commissioning Organisation's acceptance of that proposal the Provider will be relieved of his obligations to produce such CCN.
- 2.8 A CCN signed by the Commissioning Organisation and by the Provider shall constitute an amendment to the Specification

Appendix 7 – Not Used