

This document is executed as a deed and is delivered and takes effect  
at the date written at the beginning of it



<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>Par St Blazey construction</b>
<b>Project Number:</b>	<b>ENVIMSW002205</b>
<b>Contract Type:</b>	<b>Engineering Construction Contract</b>
<b>Option:</b>	<b>Option C</b>
<b>Contract Number:</b>	<b>31092</b>

Revision	Status	Originator	Reviewer	Date

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

**Project Name** Par St Blazey construction

**Project Number** ENVIMSW002205

This contract is made on 23 February 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  
ENVIMSW002205-CONS-00-SW-SO-PM-0703007 ver1.16Final

### 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  
X5: Sectional Completion  
X7: Delay damages  
X8: Undertakings to the *Client* or Others  
X9: Transfer of rights  
X10: Information modelling  
X11: Termination by the *Client*  
X15: *Contractor's* design  
X16: Retention  
X18 Limitation of Liability  
X20: Key Performance Indicators  
Y(UK)1: Project Bank Account  
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

Undertake the works as required for the Par St Blazey Flood Defence Scheme.

The *Client* is

Address for communications

Environment Agency  
Kestrel Way  
Sowton Industrial Estate  
Exeter  
EX2 7LQ

Address for electronic communications

The *Project Manager* is

Address for communications

Aecom  
Plumer House  
Tailyour Road  
Plymouth PL6 5DH

Address for electronic communications

The *Supervisor* is

Address for communications

Address for electronic communications

*To be confirmed*  
*To be confirmed*  
[To be confirmed](#)

The Scope is in

ENVIMSW002205-CONS-00-SW-SO-PM-0703007 ver1.16 Final

The Site Information is in

ENVIMSW002205-MMD-00-SW-RP-C-0703003 Site Information

The *boundaries of the site* are

ENVIMSW002205-MMD-XX-00-DR-C-0211103-0001  
 ENVIMSW002205-MMD-XX-00-DR-C-0211104-0002

The *partner contract* is  
 N/a

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 *key date*  
 'none set' 'none set'  
 'none set' '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 4 weeks

## 3 Time

The *starting date* is 23 February 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* is 28 October 2024

The *Client* is 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 Safety issue for the public is 24 Hours  
 • 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 £5,586,540.59

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 Plymouth, Mountbatten. Location: 50.354, -4.12

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 Plymouth, Mountbatten. Location: 50.354, -4.12  
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. Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, between 1st November 2020 and 31st March 2021
2. The flood trigger level is 600mm above the watercourse bed level, at a point immediately upstream of any works' location. Temporary gauge location to be agreed between parties prior to the commencement of works. If no gauge is installed and agreed there cannot be a Compensation Event
3. The presence of any Asbestos, UXO, or unforeseeable contaminated material is a Compensation Event
4. The presence of any site underground obstructions is a compensation event unless the failure to get past the obstruction is a result of the chosen method of piling.
- 5.
- 6.
- 7.

## 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

N/a

## Resolving and avoiding disputes

The *tribunal* is litigation in the courts

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

Environment Agency  
Manley House  
Kestrel Way  
Sowton Industrial Estate  
Exeter  
EX2 7LQ

Address for electronic communications

Name  
Address for communications

Environment Agency

Manley House  
Kestrel Way  
Sowton Industrial Estate  
Exeter  
EX2 7LQ

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 Aggregated Contractor's share

Delete existing clauses 54 and 93.4 and replace with:

54.7 The *Project Manager* assess the *Contractor's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Aggregated Price for Work Done to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.

54.8 If the Aggregated Price for Work Done to Date is less than the Aggregated Total of the Prices, the *Contractor* is paid its share of the saving. If the Aggregated Price for Work Done to Date is greater than the Aggregated Total of the Prices, the *Contractor* pays its share of the excess.

54.9 If, prior to the Completion Date, the Aggregated Price for Work Done to Date exceeds 110% of the Aggregated Total of the Prices, the amount in excess of 110% of the Aggregated Total of the Prices is retained from the *Contractor*.

54.10 The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the works using forecasts of the final Aggregated Price for Work Done to Date and the final Aggregated Total of Prices. This share is included in the amount due following Completion of the whole of the *works*.

54.11 The *Project Manager* makes a final assessment of the *Contractor's* share, using the final Aggregated Price for Work Done to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.

93.4 If there is a termination, the *Project Manager* assesses the *Contractor's* share after certifying termination. The assessment uses as the Aggregated Price for Work Done to Date the sum of

- the total of
  - o the Defined Cost which the *Contractor* has paid and
  - o which it is committed to pay for work done before termination
- and

- the total of
  - o the Defined Cost which the *Contractor* has paid and
  - o which it is committed to pay
- in the *partner contract* before the date the termination certificate is issued under this contract.

The assessment uses as the Aggregated Total of the Prices the sum of

- the total of
  - the lump sum price for each activity which has been completed and
  - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed
- and
- the total of
  - the lump sum price for each activity which has been completed and
  - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed
- in the *partner contract* before the date the termination certificate is issued under this contract.

Add:

- 11.2(37 ) The Aggregated Total of the Prices is sum of
  - the total of the Prices and
  - the total of the Prices in the *partner contract*

11.2(38 ) The Aggregated Price for Work Done to Date is the sum of

- the Price for Work Done to Date and/
  - the Price for Service Provided to Date in the *partner contract*.

## **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 Z1.1, 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.

## **Z18 Payment of pain/gainshare and programme incentivisation**

Delete existing clause 54.3 and replace with:

54.3 The *Project Manager* makes regular assessments of the *Contractor's* share until the Completion Date using forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due in the following assessment. The *Project Manager* shall be entitled to take the *Contractor's share* percentage into account when assessing amounts in clause 50 and clause 51 due for payment at each assessment date thereafter. The *Project Manager* shall not assess any amount greater than the amount due when the forecast reaches the top *share range* in the Contract Data Part 1 (120% of the total of the Prices).

Delete existing clause 54.4 and replace with:

54.4 If clause 54.3 does not occur during the *works*, the *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the *works* using forecasts of the final Price for Work Done to Date and the final total of Prices. This share is included in the amount due following Completion of the whole of the *work*.

Insert the following new clause 54.5:

54.5 If clause 54.3 does not occur during the *works*, the *Project Manager* makes a final assessment of the *Contractor's* share, using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.

Insert the following new clause 54.6:

Programme Payments will be made under the Framework in accordance with Schedule 17

## **Z20 Defect Dates for Sections**

Where a section of the *works* is defined and is located in a separate area of the Site, the time to the *defects date* for that section is the defined period after the Completion of that *section*, and is defined in the Contract Data.

## **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.

## 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

Address for communications 81 Fountain Street  
Manchester  
M2 2EE

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  
Responsibilities  
Qualifications  
Experience

[REDACTED]  
[REDACTED]  
Project Delivery

The *key persons* are

Name (2)  
Job  
Responsibilities  
Qualifications  
Experience

[REDACTED]  
[REDACTED]  
Project Delivery

The *key persons* are

Name (3)  
Job  
Responsibilities  
Qualifications  
Experience

[REDACTED]  
[REDACTED]  
Commercial Support

The *key persons* are

Name (4)  
Job  
Responsibilities  
Qualifications  
Experience

[REDACTED]  
[REDACTED]  
Commercial Support

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

N/A

### 3 Time

The programme identified in the Contract Data is

2021-02-21 - StBlazey - TP02 - ECC Construction

## 5 Payment

The *activity schedule* is

## Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1) [REDACTED]

Address for communications

1st Floor, Hawthorn House

Emperor Way

Exeter Business Park

Exeter

EX1 3QS

Address for electronic communications

[REDACTED]

Name (2) [REDACTED]

Address for communications

1st Floor, Hawthorn House

Emperor Way

Exeter Business Park

Exeter

EX1 3QS

Address for electronic communications

[REDACTED]

## X10: Information Modelling

The *information execution plan* identified in the Contract Data is

## Y(UK)1: Project Bank Account

The *project bank* is

Nat West

*named suppliers* are

## 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 X5: Sectional Completion

The *completion date* for each *section* of the *works* is

<i>section</i>	<i>description</i>	<i>completion date</i>
1	Completion of Leat works and planting	17 December 2021
2	Completion of all construction works including planting	28 October 2022
3	End of 2-year maintenance period for Landscape Maintenance Services	28 October 2024

### X7 plus X5

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

<i>section</i>	<i>description</i>	<i>amount per day</i>
1	Completion of Leat works and planting	£1,413.31
2	Completion of all construction works including planting	£1,413.31
3	End of 2-year maintenance period for Landscape Maintenance Services	

The delay damages for the remainder of the *works* are £1,413.31

### OPTION X10: Information modelling

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is 2 weeks

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professional providing information similar to the Project Information is, in respect of each claim

£5,000,000.00

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

12 year(s)

### OPTION X15: The *Contractor's* design

The *period for retention* following Completion of the whole of the *works* or earlier termination is 12 years

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim

£10,000,000.00

Classification: Internal.

The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

12 years

### OPTION X16: Retention

The *retention free* amount is

The *retention percentage* is

The *Contractor* ☐ may / ☐ may not give the *Client* a retention bond

**OPTION X18: Limitation of liability**

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to

£5,000,000.00

For any one event, the *Contractor's* liability to the *Client* for loss or damage to the *Client's* property is limited to

£5,000,000.00

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

£5,000,000.00

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

£10,000,000.00

The *end of liability date* is 12 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(UK)1:Project Bank Account

The Contractor is to pay any bank charges made and to be paid any interest paid by the *project bank*

## 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	<i>beneficiary</i>
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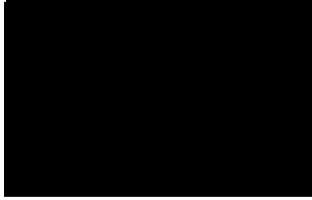
term	<i>beneficiary</i>
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The provisions of  
Y(UK)1

## Contract Execution

### *Client execution*

Signed as a Deed by



for and on behalf of the Environment Agency

Signature

Deputy Director

Role

In the presence of:



Senior Commercial Officer

Signature

Role



Name [Print]

Address

Manley House

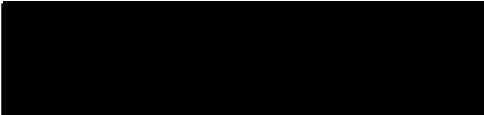
Kestrel Way, Sowton Industrial Estate

Exeter EX2 7LQ

### *Contractor execution*

### *Consultant execution*

Signed as a Deed by



for and on behalf of

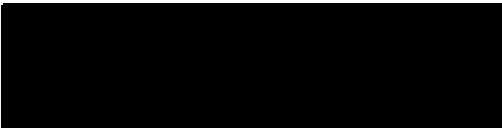
Kier Integrated Services Ltd

Commercial Director

Signature

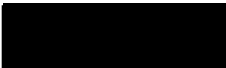
Role

In the presence of:



Contracts Officer

Role



Name [Print]

Address

C/O Kier Infrastructure

Building 3000, Cambridge Research Park,

Beach Dr, Waterbeach,

Cambridge CB25 9PD