



**Framework:** Collaborative Delivery Framework  
**Supplier:** Kier Integrated Services Ltd  
**Company Number:** 00873179

**Geographical Area:** South West  
**Project Name:** Blind Yeo Tidal Outfall 2021 Refurbishment ECC C  
**Project Number:** ENV0000164C

**Contract Type:** Engineering Construction Contract  
**Option:** Option C

**Contract Number:** 33197

Revision	Status		Originator		Reviewer		Date

## ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework

### CONTRACT DATA

**Project Name** Blind Yeo Tidal Outfall 2021 Refurbishment ECC C

**Project Number** ENV0000164C

This contract is made on 27 September 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  
ENV0000164C-CH2-000-E00-RP-CI-1002\_ECCScopeV5\_FINAL

### 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  
 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

Undertake refurbishment of the tilting weir, replacement of the tilting weir hinges in the north eye and concrete repairs to the central pier on the foreshore between the two eyes

The *Client* is

Address for communications

Environment Agency  
 Horizon House  
 Deanery 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

Jacobs  
 Aperture  
 Pynes Hill Court  
 Pynes Hill  
 Exeter  
 EX2 5SP

Address for electronic communications

The *Scope* is in

ENV0000164C-CH2-000-E00-RP-CI-1002\_ECCScopeV5\_FINAL

The *Site Information* is in

ENV0000164C-EA-00-00-RP-PM-DO400\_39 ECC Site Information\_V4

The *boundaries of the site* are

ENV0000164C-CH2-000-E00-DR-CI-0001 Site Location/Boundary and Access Plan\_C06

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

'none set'

'none set'

'none set'

*key date*

'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

27 September 2021

The *access dates* are

part of the Site

date

Tilting weir refurbishment and hinge replacement is defined as all works necessary within the North Eye of the Blind Yeo Outfall and excludes any work on the seaward side of the structure. 04 October 2021

Concrete revetment repairs is defined as all works on the central pier on the seaward side of Blind Yeo outfall and excludes all works within the North Eye 04 October 2021

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

The *Completion Date* for the whole of the works is 08 April 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 £377,133.57

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

	share range			Contractor's share percentage
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 Filton (51.52144, -2.57577)

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 Filton (51.52144, -2.57577)

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 trigger (7.22mAOD) for Flood Warning for 'Somerset Coast - Porlock Weir to Portishead' (112FWTCLE01) is exceeded. The tide gauge for these Flood Warnings is located at Avonmouth.
2. Compensation Event (CE) for fluvial flood event is defined as when the river level gauge at Blind Yeo Outfall records levels in excess of either:
  - 3.70mAOD when the Blind Yeo is at Summer Pen level, or
  - 2.80mAOD when the Blind Yeo is at Winter Pen level.

The water level is generally raised to Summer Pen level at the end of March and dropped to Winter Pen level at the start of December. The Client will confirm the seasonal penning dates on request.
3. Compensation Event for wind stopping crane operations is defined as when wind speed at the crane anemometer location exceeds 7m/s for operations using man riding basket and 12m/s for operations not involving a man riding basket.
4. 'not used'
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

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

'to be confirmed'

Address for communications

'to be confirmed'

Address for electronic communications

['to be confirmed'](#)

The *Adjudicator nominating body* is

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 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.

## **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.

## 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	Tilting weir refurbishment and hinge replacement is defined as all works necessary within the North Eye of the Blind Yeo Outfall and excludes any work on the seaward side of the structure.	08 April 2022
2	Concrete revetment repairs is defined as all works on the central pier on the seaward side of Blind Yeo outfall and excludes all works within the North Eye	08 April 2022

### OPTION X7: Delay damages

#### *X7 plus X5*

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

<i>section</i>	<i>description</i>	<i>amount per day</i>
1	Tilting weir refurbishment and hinge replacement is defined as all works necessary within the North Eye of the Blind Yeo Outfall and excludes any work on the seaward side of the structure.	£303.00
2	Concrete revetment repairs is defined as all works on the central pier on the seaward side of Blind Yeo outfall and excludes all works within the North Eye	£303.00

The delay damages for the remainder of the *works* are £303.00

### OPTION X8: Undertakings to the *Client* or Others

The *undertakings to Others* are provided to

The *Subcontractor undertaking to Others* are works

provided to

The *Subcontractor undertaking to the Client* are works

provided to

### 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

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

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

6 years

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

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

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

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

### 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

£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	<i>beneficiary</i>
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**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) [REDACTED]  
 Job Project Manager  
 Responsibilities Project Delivery  
 Qualifications [REDACTED]  
 Experience [REDACTED]

The *key persons* are

Name (2) [REDACTED]  
 Job Commercial Manager  
 Responsibilities Commercial Support  
 Qualifications [REDACTED]  
 Experience [REDACTED]

The *key persons* are

Name (3) [REDACTED]  
 Job Senior Quantity Surveyor  
 Responsibilities Commercial Support  
 Qualifications [REDACTED]  
 Experience [REDACTED]

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

no design

**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) [REDACTED]  
 Address for communications Hawthorn House  
 Emperor Way  
 Exeter Business Park  
 Exeter  
 EX1 3QS  
 Address for electronic communications [REDACTED]


Name (2) [REDACTED]  
 Address for communications Hawthorn House  
 Emperor Way  
 Exeter Business Park  
 Exeter  
 EX1 3QS

Address for electronic communications [REDACTED]



Contract Execution

Client execution

Signed under hand by 



Signature

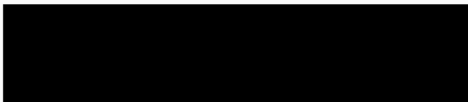
for and on behalf of the Environment Agency

Project Executive

Role

Contractor execution

Consultant execution

Signed under hand by 

Signature

for and on behalf of Kier Integrated Services Ltd

Commercial Director

Role