

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>Bath FDS - Twerton Gates Replacement</b>
<b>Project Number:</b>	<b>ENV0000377C</b>
<b>Contract Type:</b>	<b>Engineering Construction Contract</b>
<b>Option:</b>	<b>Option C</b>
<b>Contract Number:</b>	<b>28338</b>

Revision	Status		Originator		Reviewer		Date

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

**Project Name** Bath FDS - Twerton Gates Replacement

**Project Number** ENV0000377C

This contract is made on 14 April 2020  
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  
412\_13\_SD03 v NGSA ECC Scope 021219 - Bath FDS Twerton Gates Replacement V10

### 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

Secondary Options

X2: Changes in the law

X7: Delay damages

X9: Transfer of rights

X10: Information modelling

X11: Termination by the *Client*

X15: *Contractor's* design

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

Twerton Gates refurbishment / replacement

The *Client* is

Environment Agency

Address for communications

Horizon House  
Deanery Road  
Bristol  
BS1 5AH

Address for electronic communications

The *Project Manager* is

Address for communications

#REF!  
#REF!  
#REF!  
#REF!  
#REF!

Address for electronic communications

The *Supervisor* is

Address for communications

Arcadis LLP  
Rydon House  
Pynes Hill  
Exeter  
EX25AZ

Address for electronic communications

The *Scope* is in

412\_13\_SD03 v NGS A ECC Scope 021219 - Bath FDS Twerton Gates Replacement V10

The *Site Information* is in

ENV0000377C-MMD-ZZ-ZZ-RP-Z-073006-S3-P02-G0300-EA3-LOD3-Twerton gates replacement Site information

The *boundaries of the site* are

ENV0000377C-MMD-ZZ-ZZ-DR-C-0208018-Location Plan, access and working areas - P03

The *partner contract* is

not used

The *language of the contract* is EnglishThe *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

Not used

Not used

Not used

Not used

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

14 April 2020

The *access dates* are

part of the Site

the Site

date

14 April 2020

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

4 weeks

The *Completion Date* for the whole of the *works* is

09 December 2021

The *Client* is not willing to take over the *works* before the Completion DateThe 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 Public Safety is 24 Hours
- The *defect correction period* for Waterways is 24 Hours

#### 5 Payment

The *currency of the contract* is the £ sterling

The *assessment interval* is Monthly

The *Client* set total of the Prices is £5,118,953.42

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 Bath Lat 51.3754 Long -2.3585

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. Not used
2. Not used
3. Not used
4. Not used
5. Not used

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 Bath Lat 51.3754 Long -2.3585 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	Not used	Jul	Not used
Feb	Not used	Aug	Not used
Mar	Not used	Sep	Not used
Apr	Not used	Oct	Not used
May	Not used	Nov	Not used
Jun	Not used	Dec	Not used

These are additional compensation events

1. Archaeological finds  
140m3/s measured at Bathford and a 200 m3/s forecast at Bathford or an instruction to mobilise by the Client. Both scenarios relate to in-channel works only and when the stop logs are in place
- 2.

3. 'Outputs from the dive survey require a change to the bottom dimensions of the limpet dam structure
4. Pile lengths in excess of 15 metres that require additional permits to be obtained
5. Quantity of rock above or below the 500 Tonne volume assumed in the client set target
6. Concrete repairs under the waterline that relate to section 2.3.1.2 of the detailed specification
7. Change from Blockwork and render finish on the control building
8. Invasive species discovered on the Site
9. The working area outside the river channel is flooded when the upstream water level exceeds bank full
11. Waste acceptance criteria classification different to that assumed in the Scope
12. The Contractor is instructed by the Client to undertake out of hours standby arrangements for periods of heightened flood risk.
13. 'BT service diversion
14. Managing and mitigating the impact of Covid 19 and working in accordance with Public Health England guidance, as may vary from time to time, until 30 June 2020

## 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

Not used

## 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  
Exeter  
EX27LQ

Address for electronic communications

Name

Address for communications

Environment Agency  
Manley House  
Kestrel Way  
Exeter  
EX27LQ

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*.

### Z 2B: Water levels: *Contractor's risk*

Clause 60.1 (12) second bullet point is amended to: "are not weather conditions or floods and"

### 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

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)

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

## Z21 Requirement for Invoice

Add the following sentence to the end of clause 51.1:

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

Delete existing clause 51.2:

51.2 Each certified payment is made by the later of

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

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

## Z22 Resolving Disputes

Delete W2.1

## Z23 Risks and insurance

Replace clause 84.1 with the following

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

## Z30 Brexit Pricing Uncertainty

Pricing uncertainty in relation to a) Steel b) Aggregate; and c) Timber is a *Client's* risk for a period of 12 months from the *starting date*.

Z30.1 Defined terms

a) The starting date Index (S) is the latest available RPI(x) before the starting date.

b) The Latest Index (L) is the latest available index before the date of the assessment of an amount due.

c) The Price Adjustment Factor (PAF) at each date of assessment of an amount due is the total of the products

Material/Proportion

Steel/0.7

Aggregate/0.15

Timber/0.15

In the above proportions multiplied by (L-S)/S for the index linked to it.

Z30.2 If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the assessment following 12 months after the starting date is used for calculating the price adjustment after that date.

Z30.3 Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date for the materials stated above since the last assessment of the amount due multiplied by (PAF/ (1+PAF)) where PAF is the Price Adjustment Factor for the date of the current assessment.

Z30.4 The Defined Cost for compensation events is assessed using

a) The Defined Cost at *starting date* levels for amounts calculated from rates stated in the Contract Data for People and Equipment and

b) The Defined Cost current at the date the Compensation Event was notified, adjusted to the starting date by 1+PAF for each material in the proportion stated in Z30.1 c) for the last assessment of the amount due before that date for other amounts.

## Secondary Options

### OPTION X2: Changes in the law

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

### OPTION X7: Delay damages

#### X7 only

Delay damages for Completion of the whole of the *works* are £555 71 per day per day

### 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 6 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

£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 Years

### OPTION X18: Limitation of liability

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

£5,000,000

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

£5,000,000

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

£15,000,000

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 *beneficiary*

term *beneficiary*

The provisions of  
Y(UK)1 Not used

## 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 Tempsford Hall  
Sandy  
Bedfordshire  
SG19 2BD

Address for electronic communications

The *fee percentage* is

Option C

The *working areas* are

The site, Kier offices & Kier staff homes

The *key persons* are

Name (1) [REDACTED]  
Job Project Manager  
Responsibilities Project management  
Qualifications [REDACTED]  
Experience [REDACTED]

The *key persons* are

Name (2) [REDACTED]  
Job Senior Quantity Surveyor  
Responsibilities Commercial Supprot  
Qualifications [REDACTED]  
Experience [REDACTED]

The *key persons* are

Name (3)  
Job  
Responsibilities  
Qualifications  
Experience

The *key persons* are

Name (4)  
Job  
Responsibilities  
Qualifications  
Experience

The following matters will be included in the Early Warning Register

## 2 The Contractor's main responsibilities

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

N/A

## 3 Time

The programme identified in the Contract Data is

2020-03-06 - TP-01 - ECC Construction Programme

## 5 Payment

The *activity schedule* is

Twerton ECC- Activity schedule v1

## Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

## X10: Information Modelling

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

## Y(UK)1: Project Bank Account

The *project bank* is

Natwest

*named suppliers* are

Contract Execution

Client execution

Signed underhand by

[Redacted Signature]

Signature

for and on behalf of the Environment Agency

Director of Operations

Role

Contractor execution

Signed underhand by

[Redacted Signature]

Signature

for and on behalf of Kier Integrated Services Ltd

Commercial Director

Role