

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>BAM Nuttall Ltd</b>
<b>Company Number:</b>	<b>00305189</b>
<b>Geographical Area:</b>	<b>East</b>
<b>Contract Name:</b>	<b>Cockett Wick Sea Defences - Construction</b>
<b>Project Number:</b>	<b>ENV0001929C</b>
<b>Contract Type:</b>	<b>Engineering Construction Contract</b>
<b>Option:</b>	<b>Option C</b>
<b>Contract Number:</b>	<b>C17024</b>
<b>Stage:</b>	<b>Construction</b>

Revision	Status	Originator	Reviewer	Date

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework  
CONTRACT DATA

Project Name Cockett Wick Sea Defences Construction

Project Number ENV0001929C

This contract is made on 31 May 2023  
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  
Cockett Wick Ph 1 Scope Construction Works v3.1.docx

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
- 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

The construction of a new sea wall along the line of the current sea wall (approximately 330m) and reinforcement of the seaward revetment to improve the Standard of Protection from tidal flooding and to reduce the risk of breach of the sea wall.

The *Client* is Environment Agency

Address for communications

Address for electronic communications

The *Project Manager* is

Address for communications

Address for electronic communications

The *Supervisor* is

Address for communications

Address for electronic communications

The *Scope* is in

Cockett Wick Ph 1 Scope - Construction Works v3.1.docx

The *Site Information* is in

ENV0001929C-JAENV0001929C-JAC-ZZ-00-RP-Z-0002 S3 P01 K200 EA3 LOD3-Pre construction information.pdf

The *boundaries of the site* are

shown on ENV0001929C-JAC-ZZ 00 DR C 1001 S3-P02-B1300 EA3-LOD3 General Arrangement.pdf

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

15 May 2023

The *access dates* are  
part of the Site

date

Site

15 May 2023

Client staff, data and systems as set out in the Scope

15 May 2023

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

4 weeks

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

30 June 2023

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 a 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

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 Wattisham

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 Wattisham  
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 The Project Manager gives an instruction authorised by the Client to add a new section of the works, or to provide a Scope for an existing section of the works, and provides for that section (a) Scope, (b) Site Information, (c) Completion Date, and (d) Target Price.

2. Carbon Methodology Adherence to and compliance with the Environment Agency's Carbon Methodology dated 19 April 2023
3. 'not used'
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

not less than the amount required by law

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

## Resolving and avoiding disputes

The *tribunal* is litigation in the courts

The *Senior Representatives* of the *Client* are

Address for communications

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. In all instances and circumstances the Price for Work Done to Date shall not exceed the forecast for the same as provided under clause 20.4."

## **Z7 Contractor's share**

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

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

## **Z10 Payments to subcontractors, sub consultants and**

Subcontractors

The *Contractor* will use the NEC4 contract on all subcontracts for works unless another alternative and appropriate form is proposed and agreed in accordance with clause 26.3. Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these timescales then the Client reserves the right to delay payments to the Contractor in respect of subcontracted work, services or goods.

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**

Z11.1 The *Contractor* warrants all design complies with the contract whether undertaken by the *Contractor* or by sub-contractors.

Z11.2 All contracts for design employed by the *Contractor* must include:

- Y(UK)3 The Contracts Rights of Third Parties) Act 1999
- A requirement for the *Contractor's* sub-contractor to hold Professional indemnity insurance to the same level as the cover specified for the *Contractor* in this Call-off contract
- A clause to give the *Client* (the Environment Agency) the right to enforce the provisions of the Contracts (Right of Third Parties) Act 1999,
- A clause to ensure that neither the *Contractor* nor their sub-contractor can alter the provisions of their sub-contract without the consent of the *Client*
- A clause to ensure that the *Client's* rights against the sub-contractor under this agreement shall be subject to the same conditions, limitations and exclusions as apply to the *Contractor's* rights against the design consultant under this agreement
- A clause to state that except as provided in clause Z11.1, the 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 the clause does not affect any right or remedy of any other party which exists or is available apart from that Act

## **Z16 Disallowed Costs**

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

- was incurred due to a breach of safety requirements, or due to additional work to comply with safety requirements.
- was incurred as a result of the client issuing a Yellow or Red Card to prepare a Performance Improvement Plan.
- was incurred as a result of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit.

## **Z19 Linked contracts**

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

## **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

## **Z31 ECC – Price Adjustment for Inflation**

The *Client* recognises the ongoing pricing uncertainty with regards to inflation. The *Client* will mitigate this uncertainty through this clause.

#### Z31.1 Defined terms:

- a) The index is Office for National Statistics (ONS) CPI (UK, 2015=100)
- b) The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date.
- c) The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due.
- d) The Price Adjustment Factor (PAF) at each date of assessment of an amount due is  $0.9((L/B)/B)$ .

#### Z31.2 Application rules.

The provisions of this clause [Z31] shall apply provided that:

- a) The Price for Work Done to Date is less than or equal to the total of the Prices and
- b) Inflation remains positive i.e. L is greater than B

#### Z31.3 Price Adjustment Factor.

If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the Completion Date for the whole of the works is used for calculating an amount for price adjustment after that date

#### Z31.4 Price adjustment Options A and B.

**NOT USED**

#### Z31.5 Price adjustment Options C and D.

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 since the last assessment of the amount due multiplied by  $(PAF/(1+PAF))$

The Price Adjustment Factor is not applied to the fixed (non-fluctuating) element of the purchase price of rock and/or steel pile casings as agreed with the Project Manager. The change in the Price for Work Done to Date is adjusted by deducting the cost (including fee) of the fixed price elements in the calculation for the month in which they occur.

#### Z31.6 Compensation events.

**NOT USED**

#### Z111 ECC – Fee adjustment for non compliance with Scope

Delete existing 11.2 (10) and replace with the following clause

The Fee is the amount calculated by applying the *fee percentage* to the Defined Cost excluding the cost of Sub-contractors that have not complied with procurement by best value processes as defined in the Scope. 80% of the *fee percentage* is applied to the amount of the Defined Cost for Sub-contractors that have not complied with procurement by best value processes as defined in the Scope.

#### Z120 ECC – Carbon reduction

Ref. (Clause No.)	Clause words
11.2 Definitions	Add as Clause 11.2(36) (36) The Performance Table states the targets the <i>Contractor</i> is to achieve in Providing the Works and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target. The Performance Table is the <i>performance table</i> unless later changed in accordance with the contract.
15.1 Early Warnings	In Clause 15.1 add as a new bullet between the second and third bullet: "• result in a target in the Performance Table not being met,"
Performance Measurements	
57	Add as Clause 57:
57.1	'From the <i>starting date</i> until the Completion Date, the <i>Contractor</i> reports to the <i>Project Manager</i> its performance against the targets in the Performance Table. Reports are provided at the intervals stated in the Performance Table.
57.2	If the <i>Contractor's</i> performance against a target in the Performance Table is not achieving or is forecast not to achieve the performance target stated, it submits to the <i>Project Manager</i> for acceptance its proposals for improving performance  A reason for not accepting the proposals is that they will not provide the improvement in performance needed to achieve the target in the Performance Table.
57.3	At the dates stated in the Performance Table, • if the relevant performance does not meet the target stated in the Performance Table, the <i>Contractor</i> pays the amount stated in the Performance Table,  • if the relevant performance exceeds or meets the target stated in the Performance Table, the <i>Contractor</i> is paid the amount stated in the Performance Table
57.4	Information in the Performance Table is not Scope
X18	X18.5 add as a new bullet after the fourth bullet: • low performance damages if the Performance Table applies

The *performance table* is  
the Performance Table for this contract type (ECC contract for CDF Lot 2 Construction Stage) as set out in the Carbon Methodology dated 19 April 2023.

## 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

section	description	completion date
1	Phase 1	30 June 2023
2	Phase 2	30 June 2023

### X7 plus X5

section	description	amount per day
1	Phase 1	£229 00
2	Phase 2	£402.00

### 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

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 X15: The *Contractor's* design

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

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

### 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

The *end of liability date* is 12 years after the Completion of the whole of the *works* £5,000,000

**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*

No terms under this contract No beneficiary under this contract

term *beneficiary*  
The provisions of Y(UK)1 To be advised

## 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 BAM Nuttall Ltd

Address for communications



Address for electronic communications



The *fee percentage* is

Option C



The *working areas* are

The site and all locations at which work is undertaken for the benefit of the project, including but not limited to all BAM & Client's offices and premises either temporary or permanent

The *key persons* are

Name (1)



Job

Senior Contracts Manager

Responsibilities

Overall responsibility of projects under the framework

Qualifications

Experience

The *key persons* are

Name (2)



Job

Project Manager

Responsibilities

Project Delivery

Qualifications

Experience

The *key persons* are

Name (3)



Job

Managing Quantity Surveyor

Responsibilities

Commercial Management of project

Qualifications

Experience

The *key persons* are

Name (4)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

## 2 The Contractor's main responsibilities

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

## 3 Time

The programme identified in the Contract Data is

## 5 Payment

The *activity schedule* is

## Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1) [REDACTED]

Address for communications  
[REDACTED]

Address for electronic communications  
[REDACTED]

Name (2) [REDACTED]

Address for communications  
[REDACTED]

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

[REDACTED]

*named suppliers are*  
TBA

# Contract Execution

## Client execution

Signed as a Deed by [PRINT NAME]

for and on behalf of the Environment Agency

[Redacted Signature]

Signature

Date

[Redacted Role]

Role

In the presence of:

[Redacted Signature]

Signature

Date

[Redacted Role]

Role

[Redacted Name]

Name [Print]

Address

[Redacted Address]

## Contractor execution

This document has been executed as a deed and takes effect on the date stated at the beginning of it.

EXECUTED as a DEED on behalf of BAM NUTTALL LIMITED acting by:

Director / Attorney

SIGNATURE:

NAME:

POSITION:

[Redacted Signature, Name, and Position]

For use with Attorney signature only

In the presence of:

WITNESS SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Director / Attorney / Company Secretary

SIGNATURE:

NAME: \_\_\_\_\_

POSITION:

[Redacted Signature, Name, and Position]

For use with Attorney signature only

In the presence of:

WITNESS SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

(Named Attorneys are authorised to execute contracts on behalf of BAM Nuttall Limited pursuant to a Power of Attorney dated 8th October 2022)