

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



Framework:	Collaborative Delivery Framework
Supplier:	BAM Nuttall Ltd
Company Number:	00305189
Geographical Area:	East
Contract Name:	Benson Weir Refurbishment - Construction Stage
Project Number:	ENV0003198C
Contract Type:	Engineering Construction Contract
Option:	Option C
Contract Number:	C21350
Stage:	Construction

Revision	Status	Originator	Reviewer	Date

ENGINEERING AND CONSTRUCTION CONTRACT under the Collaborative Delivery Framework
CONTRACT DATA

Project Name Benson Weir Refurbishment - Construction Stage

Project Number ENV0003198C

This contract is made on 09 February 2024
between the *Client* and the *Contractor*

- This contract is made pursuant to the Framework Agreement (the "Agreement") dated 10th day of April 2019 and Framework Agreement Extension dated and signed 1st April 2023 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 23 inclusive of the Framework schedules are relied upon within this contract.
- The following documents are incorporated into this contract by reference
NEC4 ECC Scope_ Benson Weir_ 201223_v7

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			
X5: Sectional Completion			
X7: Delay damages			
X9: Transfer of rights			
X10: Information modelling			
X11: Termination by the <i>Client</i>			
X15: <i>Contractor's</i> 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: <i>Additional conditions of contract</i>			

The *works* are

The overall objective of the project is to provide a weir that can be safely and reliably operated and maintained in accordance with current client practice. Benson Weir requires replacement to its gates, MEICA, walkway/structure and substructure. It also requires the installation of a fish pass

The *Client* is Environment Agency

Address for communications Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications [REDACTED]

The *Project Manager* is TBC

Address for communications

Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The *Supervisor* is

TBC

Address for communications

Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The Scope is in

NEC4 ECC Scope_ Benson Weir_ 201223_v7

The Site Information is in

ENV0003198C-JAC-ZZ-ZZ-DT-Z-0001-Site Information.zip

The *boundaries of the site* are

Drawing ENV0003198C-JAC-ZZ-00-DR-C-1000

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

Red Board Days

High River Flows

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'

Not Used

'none set'

Not Used

'none set'

Not Used

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

31 January 2024

The *access dates* are

part of the Site

date

Asite Workspaces

31 January 2024

Fastdraft

31 January 2024

Main Compound

01 March 2024

Satellite Compound

01 March 2024

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

4 weeks

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

31 March 2026

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 New weir gates inoperable is 1 Week
- The defect correction period for Safety issue for the public 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 £10,439,314.83

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 Met Office Weather Station at Oxford (Oxfordshire)

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 The Met Office

The weather data are the records of past weather measurement for each calendar month which were recorded at Met Office Weather Station at Oxfordshi

and which are available from from: <https://www.metoffice.gov.uk/p>

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. Carbon Methodology - Adherence to and compliance with the Carbon Methodology dated 08 June 2023
2. The number of red board days in each month following notices issued by the Environment Agency for the River Thames between Days Lock and Benson Lock. Exceeds the number given below: Apr - 2 days, May - 1 day, June- 0 days, July - 0 days, Aug - 0 days, Sept - 0 days, Oct - 1 day, Nov - 5 days, Dec - 8 days, Jan - 14 days, Feb - 7 days, Mar - 7 days.
3. 'not used'
4. 'not used'
5. 'not used'

8 Liabilities and insurance

These are additional *Client's* liabilities

- 1Any asbestos found by the asbestos Refurbishment / Demolition Survey as detailed in S705 of the Scope.
- 2Any lead paint found by the Lead Paint Survey as detailed in S706 of the Scope
- 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
Riversmeet House
Newtown Industrial Estate
Tewkesbury
GL20 8JG

Address for electronic communications

Name

Address for communications

Environment Agency
Kingfisher House
Goldhay Close
Peterborough
Cambridgeshire
PE2 5ZR

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* isThe 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. 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.

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:

- The index is Office for National Statistics (ONS) CPI (UK, 2015=100).
- The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date.
- The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due.
- 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:

- The Price for Work Done to Date is less than or equal to the total of the Prices and
- 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 $(PAF/(1+PAF))$.

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 [ECC-carbon-performance-table.xlsx](#)

the Performance Table for this contract type [form, Partner, Stage] as set out in the Carbon Methodology dated 08 June 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

X7 plus X5	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is		
	<i>section</i>	<i>description</i>	<i>completion date</i>
	1	Weir B shall be operational to be certified, this shall include safe access across the walkway across the Weir B. Completion of the fish pass is not	30 November 2024
	Delay damages for each <i>section</i> of the <i>works</i> are		
	<i>section</i>	<i>description</i>	amount per day
	1	Weir B shall be operational to be certified, this shall include safe access across the walkway across the Weir B. Completion of the fish pass is not	£517.00
	The delay damages for the remainder of the <i>works</i> are		£517.00

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 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 £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 £5,000,000.00

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

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 £5,000,000

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	<i>beneficiary</i>
Not Used	Not Used
Not Used	Not Used
Not Used	Not Used
Not Used	Not Used
term	<i>beneficiary</i>
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 BAM Nuttall Ltd
Address for communications St James House
Knoll Road
Camberley
Surrey
GU15 3XW

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	
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 QS
Responsibilities	Commercial Management of the 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
St James House
Knoll Road
Camberley
Surrey
GU15 3XW

Address for electronic communications
[REDACTED]

Name (2) [REDACTED]
Address for communications
St James House
Knoll Road
Camberley
Surrey
GU15 3XW

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
To be confirmed

named suppliers are
To be confirmed

(Named Attorneys are authorised to execute contracts on behalf of BAM Nuttall Limited pursuant to Power of Attorney dated 24 March 2023)