Crown Commercial Service

**CONSTRUCTION PROFESSIONAL SERVICES DPS CONTRACT**

**SCHEDULE**

**TEMPLATE CALL OFF AGREEMENT (INCORPORATING THE NEC4
PROFESSIONAL SERVICES CONTRACT JUNE 2017 (INCLUDING
AMENDMENTS ISSUED JANUARY 2019 AND OCTOBER 2020) AND
CONTRACT DATA**

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**Date 22nd February 2024**

**FORM OF AGREEMENT**

**Incorporating the NEC4 Professional Services Contract June 2017 incorporating amendments January 2019 and October 2020**

**Between
Defence Infrastructure Organisation, Ministry of Defence
And
Arcadis Consulting (UK) Ltd
For the provision of
Land Quality Assessments 2024-2028**

**CCS reference: CPS1-28020-2023
DIO reference: 708765455**

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**THIS AGREEMENT is made the 22nd February 2024
PARTIES:**

1. **DEFENCE INFRASTRUCTURE ORGANISATION, MINISTRY OF DEFENCE** acting as part of the Crown (the "***Client***"); and
2. **Arcadis Consulting (UK) Ltd, which is a company** incorporated in and in accordance with the laws of England and Wales (Company No. 02212959 whose registered office address is at 80 Fenchurch Street, London, United Kingdom, EC3M 4BY (the "**Consultant**").

**BACKGROUND**

1. The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for construction professional services for the benefit of public sector bodies.
2. The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM6165) which is dated 1st October 2021 (the “**Framework Agreement**”). In the Framework Agreement, the Consultant is identified as the “Supplier”.
3. On the 1st December 2023 the *Client*, acting as part of the Crown, and in the Framework Agreement is identified as a “Contracting Authority” invited the *Consultant* along with other framework suppliers to tender for the *Client’s* construction professional team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
4. On the 5th of February 2024 the *Consultant* submitted a tender response and was subsequently selected by the *Client* to provide the *service*.
5. The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. The *Client* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The *Consultant* will Provide the Service in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This contract incorporates the conditions of contract in the form of the NEC4 Professional Services Contract June 2017 Edition incorporating amendments January 2019 and October 2020 and incorporating the following Options:

W2; Options X2, X5, X18, X20, and Y(UK)3

which together with the *additional conditions of contract* specified in Option Z, and the amendments specified in Option Z, form this contract together with the documents referred to in it. References in the NEC4 Professional Services Contract June 2017 Edition incorporating amendments January 2019 and October 2020 to "the contract" are references to this contract.

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1. This contract and the Framework Agreement is the entire agreement between the parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
2. Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
3. Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

**Executed under hand**

Signed by [redacted] for and on behalf of Arcadis Consulting (UK) Ltd

Authorised Signatory

Signed by [redacted], for and on behalf of the Defence Infrastructure Organisation, Ministry of Defence

Senior Commercial Officer,

Defence Infrastructure Organisation

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**Professional Services Contract
Contract Data**

**Part one – Data provided by the *Client***

**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 and secondary Options of the NEC4 Professional Services Contract June 2017 incorporating amendments January 2019 and October 2020.

Main Option A

Option for resolving and avoiding disputes W2 Secondary Options X2, X5, X18, X20, Y(UK)3 and Z. The *service* is Land Quality Assessments 2024-2028

The *Client* is Defence Infrastructure Organisation, Ministry of Defence

*Address for communications*

Defence Infrastructure Organisation Head Office,

[redacted]*Address for electronic communications*

Pre-Contract award via DSP e-sourcing only

Post award [redacted]

The *Service Manager* is [redacted]

*Address for communications*

*as above*

*Address for electronic communications*

[redacted]

The Scope is in as per the Statement of Requirement and per the Framework Agreement.

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The *language of the contract* is English.

*The law of the contract* is the law of England and Wales, and the Courts of the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts.

The *period for reply* for tender submission is 6.5 weeks

The *period for retention* is 6 years following Completion or earlier termination.

**2 The**

***Consultant’s* main responsibilities**

The *key dates* and *conditions* to be met are as per the Statement of Requirement (SOR).

The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than 4 weeks

**3 Time**

*The mobilisation date is* 26th February 2024
*The starting date* is 1st April 2024

The *Client* provides access to persons, places and things as per the SOR, and Tasking Order Form (TOF)

The contact will have a commitment of 2 years, with an optional 1+ 1+ years to be taken up ONLY if the contract is being met.

If the +1 +1 option years are invoked, the completion date for the whole of this call off contract is 31st March 2028.

**4 Quality Management**

The period between Completion of the whole of the *service* and the *d*e*fects date* is NOT APPLICABLE*.*

**5 Payment**

The *currency of the contract* is the pound sterling (£).

The *interest rate* is, 3% per annum above the Bank of England base rate in force from time to time.

The period within which payments are made is one month.

**Invoices must be submitted via Exostar no later than 1 month after a milestone/deliverable has been met. Late invoicing may be rejected.**

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Travel and Subsistence (T&S) is to be capped at Civil Service rates, as per the table below, and as per the business travel guide (provided within a separate document).

|  |  |
| --- | --- |
| **Type** | **Maximum allowance** |
| Travel (MMA) | Standard = 45p per milePassenger supplement = 5p per mile per passenger |
| Day Subsistence | £5.00 per person per day |
| Night Subsistence | £25.00 per person per day |
| Accommodation | £100.10 per person per night |

* Travel (Motor Mileage Allowance) = Rate per mile of travel from stated office location to site and back from stated office location, per day for commuting purposes or at start and end of week (or part of week) for longer duration projects. Mileage is incurred where site meetings are required and as part of desk study walkover surveys (Phase 1) and during intrusive site investigation works (Phase 2) plus any associated post site work monitoring. Any usual “home to duty station” mileage should not be claimed.
* Day Subsistence = Lunches/refreshments during periods spent on site, away from the duty station, per person per day.
* Night Subsistence = Evening meals when staying overnight in accommodation, per person per night. No alcohol can be claimed, and meals are not to be “excessive”.
* Accommodation (overnight) = Overnight accommodation where necessary, per person per night. Mess accommodation must be the default position to obtain value for money. If Mess accommodation is not available, overnight accommodation elsewhere will be reimbursed by the MOD, however hotels should provide breakfast as part of the fee. If Mess accommodation is available and the supplier chooses to stay elsewhere, this will not be reimbursed.
* There may be some rare circumstances where a hotel breakfast is not possible (early start or breakfast not provided), in which the Authority are content to take a pragmatic approach and refund a breakfast meal up to the sum of £10.00. This will be approved on a case by case basis and justification should be provided to support this.

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All T&S claims must be accompanied by evidence of [costs. I.e. an](http://costs.I.e.an) official hotel invoice, or a copy of the itemised meal receipt. Hotel booking confirmations will not be accepted as “receipts”. All meal receipts should be itemised.

**6 Compensation**

**events**

Compensation events shall follow the NEC4 process, including the use of Early Warning Notices being raised no later than 8 weeks after a potential issue has occurred or been identified.

**8 Liability and insurance**

The amounts of insurance and the periods for which the *Consultant* maintains insurance are

**event cover Period**

The *Consultant’s* failure to use the skill and care normally used by professionals providing services similar to the *service*

loss of or damage to property or death of or bodily injury to a person (not an employee of the *Consultant*) arising from or in connection with the *Consultant* Providing the Service

from the *starting date* until 6 years following

completion of the whole of the *service* or earlier termination

from the *starting date* until all notified Defects have been corrected or earlier termination

£5,000,000 in respect of each event, without limit to the number of events except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate

As required under Framework Agreement

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|  |  |  |
| --- | --- | --- |
| death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | As required under Framework Agreement | from the *starting date* until all notified Defects have been corrected or earlier termination |

*The Consultant*'s total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters, is limited to £5,000,000 in the aggregate

The *Consultant* provides these additional insurances:

Airside Vehicle Insurance (if using own vehicles on a live airfield).

The *tribunal* is arbitration

The *arbitration procedure* is the London Court of International Arbitration Rules.

The place where arbitration is to be held is London

The person or organisation who will choose the arbitrator if the parties cannot agree a choice or if the *arbitration procedure* does not state who selects and arbitrator is: Institution of Civil Engineers*.*

The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicator*s published by the Institution of Civil Engineers or nominated by the *Adjudicator nominating body* in the absence of agreement.

*Address for communications*

[redacted]

*Address for electronic communications*

[redacted]

The *Adjudicator nominating body* is the *Institution of Civil Engineers*

**If Option X2 is used**

*The law of the project* is the law of England and Wales

**Resolving and avoiding disputes**

**If the *tribunal* is arbitration**

**Option X2 Changes in the**

**law**

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**Option X5 Sectional Completion**

**Option X18 Limitation of**

**liability**

**Option X20 Key performance indicators**

**Option Y(UK)3 The Contracts (Rights of Third Parties) Act**

**If Option X5 is used**

*The completion date* for each *section* of the *service* is as per the SOR and TOF

**If Option X18 is used**

The *Consultant’s* liability to the *Client* for indirect or consequential loss is limited to £5,000,000 in the aggregate

The *end of liability* date is 6 years after Completion of the whole of the *service*.

**If Option X20 is used**

A report of performance against each Key Performance Indicator is provided at intervals of 1 month.

**If Y(UK)3 is used**

**term person or organisation**

All T&C’s within this Any and all named

contract documentation subcontractors named within

DEFFORM47 Annex A

**Option Z** The *additional conditions of contract* are:

**Contract Data
relating to Z**

**clauses**

* Option Z2 - Identified and defined terms
* Option Z4 - Admittance to Clients Premises
* Option Z5 - Prevention of fraud and bribery
* Option Z6 - Equality and diversity
* Option Z7 - Legislation and Official Secrets
* Option Z8 - Conflict of interest
* Option Z9 - Publicity and Branding
* Option Z10 - Freedom of information
* Option Z13 - Confidentiality and Information Sharing
* Option Z14 - Security Requirements
* Option Z16 - Tax Compliance
* Option Z22 - Fair payment
* Option Z44 - Intellectual Property Rights
* Option Z45 - HMRC Requirements
* Option Z46 - MoD DEFCON Requirements

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* Option Z47 - Small and Medium Sized Enterprises (SMEs)
* Option Z49 - Change of Control
* Option Z50 - Financial Standing
* Option Z52 - Records, audit access and open book data
* Option Z100 - Data Protection
* Option Z101 - Cyber Essentials

**Other *Additional conditions of contract***

The following MOD DEFCONS apply:

* DEFCON 5J (Edn 18/11/16) - Unique Identifiers
* DEFCON 76 (Edn 06/21) - Contractors Personnel at Government Establishments
* DEFCON 501 (Edn 10/21) - Definitions And Interpretations
* DEFCON 503 (Edn 06/22) - Formal Amendments To Contract
* DEFCON 513 (Edn 04/22) - Value Added Tax (VAT) and Other Taxes
* DEFCON 514 (Edn 08/15) - Material Breach
* DEFCON 515 (Edn 06/21) - Bankruptcy And Insolvency
* DEFCON 516 (Edn 04/12) - Equality
* DEFCON 522 (Edn 11/21) - Payment And Recovery of Sums Due
* DEFCON 530 (Edn12/14) – Dispute Resolution (English Law)
* DEFCON 531 (Edn 09/21) - Disclosure Of Information
* DEFCON 532A (Edn 05/22) – Protection of Personal Data
* DEFCON 534 (Edn 06/21) - Subcontracting And Prompt Payment
* DEFCON 537 (Edn 12/21) - Rights Of Third Parties
* DEFCON 538 (Edn 06/02) - Severability
* DEFCON 539 (Edn 01/22) - Transparency
* DEFCON 550 (Edn 02/14) - Child labour and Employment Law
* DEFCON 566 (Edn 10/20) - Change Of Control Of Contractor
* DEFCON 602B (Edn 12/16) - Quality Assurance Without Quality Plan
* DEFCON 642 (Edn 07/21) - Progress Meetings
* DEFCON 649 (Edn 12/16) - Vesting
* DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5M
* DEFCON 658 (Edn 09/21) - Cyber (Cyber Risk Profile for the contract – in accordance with the Guidance and information contained within the “Tender Criteria and Submission Guidance” document, and as per the qualification envelope).
* DEFCON 659a (Edn 09/21) - Security Measures
* DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements
* DEFCON 670 (Edn 02/17) - Tax Compliance
* DEFCON 703 (Edn 06/21) - Intellectual Property Rights

Where there is a discrepancy/contradiction between NEC terms and DEFCONS, the MOD DEFCONS will take precedence.

MOD DEFCONS are available through

<https://www.gov.uk/guidance/knowledge-in-defence-kid>

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**Part two – Data provided by the *Consultant***

**1 Statements given** The *Consultant* is Arcadis Consulting (UK) Ltd

**in all contracts** *Address for communications* [redacted]

*Address for electronic communications* [redacted]The *fee percentage* is Please refer to fee schedule

The *key persons* are

* Please refer to technical response; Technical Q2a

The following matters will be included in the Early Warning Register

* Please refer to technical response.

**2 The *Consultant’s* main responsibilities**

**If the Consultant is to provide the Scope**

**3 Time**

**If a programme is to be identified in the Contract Data**

**If the *Consultant* is to decide the *completion date* for the whole of the *service***

**5 Payment**

The Scope provided by the *Consultant* is as in client issued documents, ITT reference 708768455; ref 2031128 – Statement of Requirement EOLM Final

N/A

N/A

|  |  |
| --- | --- |
| **If the *Consultant* states any *expenses*** | The *expenses* stated by the *Consultant* are |
|  | **unt** |

**If Option A or C is** The *activity schedule* is Please refer to commercial submission. **used**

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The tendered total of the Prices is GBP £Please refer to commercial submission.

**Resolving and** The *Representatives* of the *Consultant* are
**avoiding disputes** *Name:* [redacted]

|  |  |
| --- | --- |
| **Data for the Schedule of Cost Components (used only with Options A and C)** | The *Senior Representatives* of the *Consultant* are *Name:* [redacted]The *overhead percentages* for the cost of support people and office overhead arelocation *overhead percentage*[ N/A ] [ N/A ][ N/A ] [ N/A ][ N/A ] [ N/A ] |

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|  |  |
| --- | --- |
| **Data for the Schedule of Cost Components (used only with Option A)** | * Rates are to be **capped** as per the rates agreed with CCS.
* Rates given must be **inclusive** of overhead and profit, but exclusive of vat
* Rates **exclude** travel and subsistence cost which is as per the “pricing” section within this document

The *people rates* are provided within the Pricing Envelope. |

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