Crown Commercial Service

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CONSTRUCTION PROFESSIONAL services framework schedule 5

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 25 October 2022**

**FORM OF AGREEMENT**

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

**Between**

**The Ministry of Defence (MOD) – The Defence Infrastructure Organisation (DIO)**

**And**

**Arcadis LLP**

**For the provision of**

**Technical Service Provider (tsp) For L Site Regen Phase 1 &2 RNAS CULDROSE**

**DIO Contract Number: 704197450**

**CCS RM6165 Framework Lot 5**

**ACUA Reference: CPS1-18444-2022**

**THIS AGREEMENT is made the day of 25 October 2022.**

**PARTIES:**

1. **Ministry of Defence** acting as part of the Crown (the "***Client***"); and

2. **Arcadis LLP** which is a company incorporated in and in accordance with the laws of **England & Wales** (Company No. **OC368843** whose registered office address is at 80 Fenchurch Street, London, 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 CCS RM6165) which is dated 3 November 2021 (the “**Framework Agreement**”). In the Framework Agreement, the Consultant is identified as the “Supplier”.
3. The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

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.

The *Consultant* will Provide the Service in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.

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:

Main Option A

W2;

Option X2, X10 X18 and X20

Option Y(UK)2

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.

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.

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.

Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

**Executed under hand**

[Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF COMPANY]

...............................

[SIGNATURE OF DIRECTOR]

Director

**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, X10, X18, X20 and Z Clauses | | |
|  | The *service* is determined in Lot 5 of the Framework Agreement RM6165.  The *Client* is  *Defence Infrastructure Organisation, Marlborough lines, Andover, Hampshire SP118HJ*  *Address for communications*  *Address for electronic communications*  REDACTED | | |
|  | The *Service Manager* is  *Address for communications*  *Defence Infrastructure Organisation, Building W75, RNAS Culdrose, Helston, TR12 7RH*  *Address for electronic communications*  REDACTED | | |
|  | The Scope is in L Site Regen Phase 1 &2 RNAS Culdrose Technical Statement of Requirement & Schedule of Services documents | | |
|  | 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.  Where legislation is expressly mentioned in this Call Off Contract the legislation of the country selected here, shall have the effect of substituting the equivalent country’s legislation.  The *period for reply* is two weeks  The *period for retention* is 6 years following Completion or earlier termination. | | |
|  | The following matters will be included in the Early Warning Register  N/A | | |
|  | Early warning meetings are held at intervals no longer than  Two weeks | | |
| 2 The *Consultant’s* main responsibilities |  | | |
| ~~If the Client has identified work which is set to meet a stated~~ *~~condition~~* ~~by a~~ *~~key date~~* | ~~The~~ *~~key dates~~* ~~and~~ *~~conditions~~* ~~to be met are~~  *~~condition~~* ~~to be met~~ *~~key date~~*  ~~[….] [….]~~  ~~[….] [….]~~  ~~[….] [….]~~ | | |
| If Option A is used | The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than four weeks | | |
|  |  | | |
| 3 Time | *The starting date* is contract award. | | |
|  | The *Client* provides access to the following persons, places and things   * access to *access date* * RNAS Culdrose Contract Award * [….] [….] * [….] [….] | | |
|  | The *Consultant* submits revised programmes at intervals no longer than one month. | | |
| If the *Client* has decided the *completion date* for the whole of the *service* | The *completion date* for the whole of the *service* is 30th November 2023. | | |
| If no programme is identified in part two of the Contract Data | The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is two weeks. | | |
| 4 Quality Management |  | | |
|  | The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is two weeks.  The period between Completion of the whole of the *service* and the *d*e*fects date* is 52 weeks*.* | | |
| 5 Payment |  | | |
|  | The *currency of the contract* is the pound sterling (£). | | |
|  | The *assessment interval* is four weeks. | | |
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|  | The *interest rate* is 3% per annum above the Bank of England base rate in force from time to time. | | |
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| 6 Compensation events |  | | |
| If there are additional compensation events | These are additional compensation events  N/A | | |
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| 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* | £6,500,000 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 [fire safety/cladding claims] where a lower level may apply in the aggregate | from the *starting date* until 6 years following completion of the whole of the *service* or earlier termination |
|  | 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 | As required under Framework Agreement | from the *starting date* until all notified Defects have been corrected or earlier termination |
|  | 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 |
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|  |  | | |
|  | *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 £6,500,000 in the aggregate. | | |
| Resolving and avoiding disputes |  | | |
|  | The *tribunal* is arbitration | | |
| **If the *tribunal* is arbitration** | The *arbitration procedure* is the latest edition of the Institution of Civil Engineers Arbitration Procedure published by the Institution of Civil Engineers at the time the arbitrator is appointed;  The place where arbitration is to be held is London, England.  The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the arbitration procedure does not state who selects an arbitrator is;  the Institution of Civil Engineers, One Great George Street, London, SW1P 3AA | | |
|  |  | | |
|  |  | | |
|  | The *Senior Representatives* of the *Client* are  REDACTED   * *Address for communications* * *DIO Kentigern House, Glasgow, G2 8EX*   *Address for electronic communications*  REDACTED  The *Senior Representatives* of the *Client* are  REDACTED   * *Address for communications* * *DIO, Building 7, Wyvern Barracks, Barrack Road,* * *Exeter, EX2 6AR*   REDACTED | | |
|  | 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 160 Aldergate Street, Barbican, London, EC1A 4HT* | | |
|  | * The *Adjudicator nominating body* is the *Technology and Construction Solicitors Association (TeCSA)* | | |
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| Option X2 Changes in the law | **If Option X2 is used**  *The* *law of the project* is the law of England and Wales. | | |
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| Option X10 Information modelling | **If Option X10 is used** | | |
| If no *information execution plan* is identified in part two of the Contract Data | The period after the Contract Date within which the *Consultant* is to submit a first Iinformation Execution Plan for acceptance is six weeks | | |
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| Option X18 Limitation of liability | **If Option X18 is used** | | |
|  | The *Consultant’s* liability to the *Client* for indirect or consequential loss is limited to £0.00.  The *Consultant’s* liability to the *Client* for Defects that are not found until after the *defects date* is limited to £6,500,000 in the aggregate.  The *end of liability* date is 6 years after Completion of the whole of the *service*. | | |
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| X20: Key Performance Indicators | To be agreed up on Contract Award | | |
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| Option Z | The *additional conditions of contract* are: | | |

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| --- | --- |
| Contract Data relating to Z clauses | *The additional conditions of contract are as selected below and as detailed in the appended Standard Boilerplate Amendments* |
| Option Z2 | **Identified and defined terms**  applies |
| Option Z4 | **Admittance to Client’s Premises**  applies |
| Option Z5 | **Prevention of fraud and bribery**  applies |
| Option Z6 | **Equality and diversity**  applies |
| Option Z7 | **Legislation and Official Secrets**  applies |
| Option Z8 | **Conflict of interest**  applies |
| Option Z9 | **Publicity and Branding**  applies |
| Option Z10 | **Freedom of information**  applies |
| Option Z13 | **Confidentiality and Information Sharing**  applies |
| Option Z14 | **Security Requirements**  applies |
| Option Z16 | **Tax Compliance**  applies |
| Option Z22 | **Fair payment** |
|  | applies |
| Option Z42 | **The Housing Grants, Construction and Regeneration Act 1996**  applies |
| Option Z44 | **Intellectual Property Rights**  does not apply |
| Option Z45 | **HMRC Requirements**  applies |
| Option Z46 | **MoD DEFCON Requirements**  applies |
| Option Z47 | **Small and Medium Sized Enterprises (SMEs)**  applies |
| Option Z48 | **Apprenticeships**  does not apply |
| Option Z49 | **Change of Control**  applies |
| Option Z50 | **Financial Standing**  applies |
| Option Z51 | **Financial Distress**  does not apply |
| Option Z52 | **Records, audit access and open book data**  applies |
| Option Z100 | **Data Protection**  applies |
| Option Z101 | **Cyber Essentials**  applies |
| Other *Additional conditions of contract* | **Z46 – MOD DEFCONS**  Insert a new clause 18B  This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed at https://www.gov.uk/guidance/knowledge-in-defence-kid  **MOD Additional Conditions of Contract (DEFCONS) are:**  **1.** DEFCON 5J (Edn 18/11/16) - Unique Identifiers  **2.** DEFCON 76 (Edn 06/21) - Contractor's Personnel at Government Establishments  **3.** DEFCON 129J (Edn 18/11/16) - Use of Electronic Business Delivery Form  **4.** DEFCON 501 (Edn 10/21) - Definitions & Interpretations  **5.** DEFCON 503 (Edn 07/21) - Formal Amendments to Contract  **6.** DEFCON 507 (Edn 07/21) – Delivery  **7.** DEFCON 513 (Edn 07/21) - Value Added Tax  **8.** DEFCON 514 (Edn 08/15) - Material Breach  **9.** DEFCON 515 (Edn 06/21) - Bankruptcy and Insolvency  **10.** DEFCON 516 (Edn 04/12) - Equality  **11.** DEFCON 518 (Edn 02/17) - Transfer  **12.** DEFCON 520 (Edn 08/21) - Corrupt Gifts and Payments of Commission  **13.** DEFCON 522 (Edn 11/21) - Payment and Recovery of Sums Dues   * **14.** DEFCON 526 (Edn 08/02) – Notices * **15.** DEFCON 527 (Edn 09/97) - Waiver * **16.** DEFCON 529 (Edn 09/97) - Law (English) * **17.** DEFCON 531 (Edn 09/21) - Disclosure of Information * **18.** DEFCON 532B (Edn 09/21) - Protection of Personal Data * **19.** DEFCON 534 (Edn 06/21) - Sub Contracting and Prompt Payment * **20.** DEFCON 537 (Edn 12/21) - Rights of Third Parties * **21.** DEFCON 538 (Edn 06/02) - Severability * **22.** DEFCON 539 (Edn 01/22) – Transparency * **23.** DEFCON 550 (Edn 02/14) - Child Labour and Employment Law * **24.** DEFCON 566 (Edn 10/20) - Change of Control of Contractor * **25.** DEFCON 602B (Edn 12/06) - Quality Assurance (without Deliverable Quality Plan * **26.** DEFCON 604 (Edn 06/14) - Progress Reports * **27.** DEFCON 605 (Edn 06/14) - Financial Reports * **28.** DEFCON 609 (Edn 07/21) - Contractor’s Records * **29.** DEFCON 620 (Edn 08/21) - Contract Change Control Procedure * **30.** DEFCON 632 (Edn 11/21) - Third Party Intellectual Property – Rights & Restrictions * **31.** DEFCON 642 (Edn 07/21) - Progress Meetings * **32.** DEFCON 658 (Edn 09/21) – Cyber * **33.** DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5M * **34.** DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements * **35.** DEFCON 670 (Edn 02/17) - Tax Compliance * **36.** DEFCON 694 (Edn 07/21) - Accounting For Property of the Authority * **37.** DEFCON 703 (Edn 06/21) - Intellectual Property Rights – Vesting in the Authority * In the event of a conflict between the NEC4 Core Clauses, Z Clauses and the above DEFCONs, the DEFCONs shall take precedence. * The following DEFFORMs shall be used:   1. DEFFORM 94 – Bidders Confidentiality Agreement  2. DEFFORM 539A - Tenderers Commercially Sensitive Information Form |
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| Part two – Data provided by the *Consultant* | |
| 1 Statements given in all contracts | The *Consultant* is Arcadis LLP  *Address for communications: 80 Fenchurch Street, London, EC3M 4BY*  *Address for electronic communications: cpsframework@arcadis.com* |
|  |  |
|  | The *key persons* are  Name Steve Dixon  Job Defence Sector Leader  Responsibilities Defence Lead  Experience An experienced leader of complex projects, Steve has spearheaded our Defence Sector, creating and leading our business over the last 5 years.  Name Michael Swatzki  Job Accommodation Lead  Responsibilities Accommodation  Experience Michael has experience delivering a range of services including Programme Management, Project Management, Employer’s Agent and Cost Consultancy activities through various forms of contract.  Name Martin Rance  Job EMP Framework Lead  Responsibilities EMP Expertise  Experience Martin is an experienced built asset consultant who delivers value for clients by building lasting working relationships and gaining a deep understanding of the client’s perspective. Experience of long-term strategic asset management plans to guide investment across Ministry of Defence  Name Peter Whitehead  Job Navy Masterplanning Expert  Responsibilities Masterplanning Expertise  Experience Peter is an urban planner / architect with over 35 years’ experience working in multi-disciplinary practices in the UK and overseas  Name Gift Hamisi  Job Lead Project Manager  Responsibilities Project Management  Experience Gift has experience of delivering projects from the feasibility to detailed design stages of a project. Gift possesses knowledge in all phases of the project management life cycle, focuses on delivering outcomes, building strong team relationships and an advocate of collaborative working to achieve efficient results and timely project delivery.  Name Kennedy Robinson  Job Assistant Project Manager  Responsibilities Project Management  Experience Kennedy is an Assistant Project Manager who has experience of working for the DIO, delivering RIBA stages 1-3 and managing a multidisciplinary design team alongside the PM  Name Luke Riggall  Job Lead Designer  Responsibilities Design; Architecture  Experience Based in Defence with cross-sector experience through Education and Justice, Luke has worked on a range of complex and challenging projects from concept to completion.  Name Samuel Price  Job Survey and Environmental Lead  Responsibilities Surveys and Environment  Experience Samuel has experience in co-ordination of multi-disciplinary environmental assessment (including statutory Environmental Impact Assessment (EIA)), Environmental Statements and screening of projects at the design stage.  Name Susan Ell  Job Cost & Commercial Lead  Responsibilities Cost & Commercials  Experience Susan is a Director, leading our Cost and Commercial team, with extensive experience in the building and engineering sector.  Name Peter Summerside  Job Planner  Responsibilities Planning  Experience Peter has significant experience in planning, programme controls, portfolio planning, EVM, framework management, project management and business change.  Name Martin White  Job Risk Manager  Responsibilities Risk Management  Experience Martin White has a strong risk management background with experience across sectors including Defence, Rail, National Infrastructure, Utilities etc.  Name Neil Prince  Job Principal Designer  Responsibilities Principal Designer  Experience Neil is an experienced CDM Principal Designer and CDM Client Adviser with over 21 years of experience in the construction industry with Health & Safety and Asbestos Management expertise.  Name Petronella Malala  Job BIM Manager  Responsibilities BIM  Experience Petronella has over 10 years of experience in the delivery of BIM and CAD for multiple discipline Engineering projects. During this time, she has gained experience in energy, security, structural and civil projects producing models and drawings, coordinating multi-disciplinary digital output and client liaison.  Name Richard Scott  Job Lead Engineer  Responsibilities Engineering  Experience Richard is currently a defence sector lead at WSP, with a wealth of experience working on MOD projects, from accommodation to training and offices, in both the UK and overseas.  Name Tim Danson  Job Sustainability Lead  Responsibilities Sustainability  Experience Tim has over 22 years’ experience from a number of different sectors across the built environment, from rail to highways, buildings, aviation, organisations and investment. |
|  | The following matters will be included in the Early Warning Register  TBC |
| 2 The *Consultant’s* main responsibilities |  |
| If the Consultant is to provide the Scope | The Scope provided by the *Consultant* is in[L Site 1and2\_TSP Clients Scope 24 July 22; L Site 1and2\_TSP\_ADDENDUM 1 to Clients Scope 24 July 22 and 20220909\_ADDENDUM 1 to Clients Scope 09 September v 1.1\_ISSUED WITH TENDER AMDT 1\_O |
| 3 Time |  |
| If a programme is to be identified in the Contract Data | The programme identified in the Contract Data is Reliant on the programme/timescales for delivery included in the consultant’s tender submission |
| If the *Consultant*  is to decide the *completion date* for the whole of the *service* | The *completion date* for the whole of the *service* is TBC |
| 5 Payment |  |
| **If the *Consultant* states any *expenses*** | The *expenses* stated by the *Consultant* are   |  |  | | --- | --- | | * **item** | * **amount** | | * N/A | * N/A | |
|  |  |
| **If Option A or C is used** | The *activity schedule* is to be agreed as applicable on a project by project basis  The tendered total of the Prices is to be agreed as applicable on a project by project basis |
| **Resolving and avoiding disputes** | The *Representatives* of the *Consultant* are  *Martin Rance*   * *Address for communications* 80 Fenchurch Street, London, EC3M 4BY   *Address for electronic communications* [*cpsframework@arcadis.com*](mailto:cpsframework@arcadis.com)  *Steve Dixon*   * *Address for communications* 80 Fenchurch Street, London, EC3M 4BY   *Address for electronic communications* [*steve.dixon@arcadis.com*](mailto:steve.dixon@arcadis.com) |
|  | The *Senior Representatives* of the *Consultant* are  *Steve Dixon*   * *Address for communications* 80 Fenchurch Street, London, EC3M 4BY   *Address for electronic communications* [*cpsframework@arcadis.com*](mailto:cpsframework@arcadis.com)  *Martin Rance*   * *Address for communications* 80 Fenchurch Street, London, EC3M 4BY   *Address for electronic communications* [*martin.rance@arcadis.com*](mailto:martin.rance@arcadis.com) |
| Option X10 Information modelling  *N/A* | If Option X10 is used |
| If an *information execution plan* is to be identified in the Contract Data | The Information Execution Plan identified in the Contract Data is N/A |
|  |  |
|  | The *project bank* is N/A |
|  | *named suppliers* are N/A |
| Data for the Schedule of Cost Components (used only with Options A and C) |  |
|  | The *overhead percentages* for the cost of support people and office overhead are  location  *overhead percentage*  [ N/A ] [ ]  [ ] [ ]  [ ] [ ] |
| Data for the Schedule of Cost Components (used only with Option A) |  |
|  | The *people rates* are:  Category of person Unit Rate  [ N/A ] [ ] [ ]  [ ] [ ] [ ]  [ ] [ ] [ ] |