

**Booklet 2**

**Terms & Conditions**

**for RIBA 1 and RIBA 2 (Option) for the provision of a seismically compliant primary school in Naples.**

**NEC 4 PSC**

**Version 1.0**

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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..................................**

**FORM OF AGREEMENT**

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

**Between**

**.......................................................................................................................................**

**And**

**.......................................................................................................................................**

**For the provision of**

**RIBA 1 and RIBA 2 (Option) for the provision of a seismically compliant primary school in Naples**

**THIS AGREEMENT [BY DEED] is made the [..................] day of [.......................]**

**PARTIES:**

1. **[CONTRACTING AUTHORITY NAME]** **[**[which is a company registered in **[ ]**under company number **[ ]**and whose registered office is at] [whose offices are located at] [ADDRESS] **OR [**acting as part of the Crown] (the "***Client***"); and

2. **[FRAMEWORK SUPPLIER NAME]** which is a company incorporated in and in accordance with the laws of **[ ]** (Company No. **[ ]** whose registered office address is at **[ ]**(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 [ ]) which is dated [ ] (the “**Framework Agreement**”). In the Framework Agreement, the Consultant is identified as the “Supplier”.
3. [On the *[insert date of issue of tender]* 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).]1
4. [On the *[insert date of tender response]* the *Consultant* submitted a tender response and was subsequently selected by the *Client* to provide the *service*.][[1]](#footnote-2)
5. 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:

W2;

Option X2 and X18

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. X18, Y(UK)2, and Z. | | |
|  | The *service* is professional and technical support to undertake activities up to and including Phase 1 of the replacement school as detailed in the Client Specification, which consist of:   * RIBA Stage 1 (Preparation and Briefing) and; * RIBA Stage 2 (Concept Design) [Note this is an option which will be included only at the decision of the Client]   The *Client* is the Secretary of State for Defence  *Address for communications:*  INFORMATION REDACTED  *Address for electronic communications*  INFORMATION REDACTED | | |
|  | The *Service Manager* is INFORMATION REDACTED  *Address for communications*  INFORMATION REDACTED  *Address for electronic communications*  INFORMATION REDACTED | | |
|  | *The Scope* is detailed in the Client Specification and Associated Annexes (Booklet 3) | | |
|  | 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.  If Option Y(UK)2 is said to apply then notwithstanding that this contract relates to the carrying out of construction operations other than in England or Wales or Scotland, the Act is deemed to apply to this contract.  The *period for reply* is two weeks except that  The *period for reply* for or accepting particulars of design is four weeks  The *period for retention* is 6 years following Completion or earlier termination. | | |
|  | The following matters will be included in the Early Warning Register:  Nil | | |
|  | Early warning meetings are held at intervals no longer than four weeks. | | |
| 2 The *Consultant’s* main responsibilities |  | | |
| 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 tbc | | |
|  | The *Client* provides access to the following persons, places and things   * access to *access date* * [tbc….] [….] * [….] [….] | | |
|  | The *Consultant* submits revised programmes at intervals no longer than one month. | | |
| 4 Quality Management |  | | |
|  | The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is 4 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 monthly, on the final day of the month. | | |
| If the period in which payments are made is not three weeks and Y(UK)2 is not used | The period within which payments are made is 30 days. | | |
| 6 Compensation events |  | | |
| If there are additional compensation events | These are additional compensation events  N/A | | |
|  |  | | |
| 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* | £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 | 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 |
|  | *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 | | |
| Resolving and avoiding disputes |  | | |
|  | The *tribunal* is arbitration | | |
| **If 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 *Representatives* of the *Client* are  INFORMATION REDACTED   * *Address for communications*   INFORMATION REDACTED  *Address for electronic communications*  INFORMATION REDACTED | | |
|  | The *Senior Representatives* of the *Client* are  INFORMATION REDACTED   * *Address for communications*   INFORMATION REDACTED  *Address for electronic communications*  INFORMATION 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 [ tbc ]*  *Address for electronic communications [ tbc ]* | | |
|  | The *Adjudicator nominating body* is the *Institution of Civil Engineers* | | |
|  |  | | |
|  |  | | |
| Option X2 Changes in the law | **If Option X2 is used**  *The* *law of the project* is the law of England and Wales. | | |
| 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 £5,000,000  The *Consultant’s* liability to the *Client* for Defects that are not found until after the *defects date* 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*. | | |
| Option Y(UK)2 The Housing Grants, Construction and Regeneration Act | **If Y(UK)2 is used** | | |
| If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due | The period for payment is 30 days after the date on which a payment becomes due | | |
|  |  | | |
| Option Z | The *additional conditions of contract* are: | | |

|  |  |
| --- | --- |
| Contract Data relating to Z clauses |  |
| 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**  applies |
| Option Z45 | **HMRC Requirements**  does not apply |
| Option Z46 | **MoD DEFCON Requirements**  applies  see Appendix 1 |
| Option Z47 | **Small and Medium Sized Enterprises (SMEs)**  does not apply |
| Option Z48 | **Apprenticeships**  does not apply |
| Option Z49 | **Change of Control**  applies |
| Option Z50 | **Financial Standing**  applies |
| Option Z51 | **Financial Distress**  applies |
| Option Z52 | **Records, audit access and open book data**  applies |
| Option Z100 | **Data Protection**  applies |
| Option Z101 | **Cyber Essentials**  applies |

|  |  |
| --- | --- |
| Part two – Data provided by the *Consultant* | |
| 1 Statements given in all contracts | The *Consultant* is [ ]  *Address for communications [ ]*  *Address for electronic communications [ ]* |
|  | The *fee percentage* is [ ]% |
|  | The *key persons* are  Name [ ]  Job [ ]  Responsibilities [ ]  Experience [ ]   * *[repeat as necessary]* |
|  | The following matters will be included in the Early Warning Register  [….]. |
| 2 The *Consultant’s* main responsibilities |  |
| If the Consultant is to provide the Scope | The Scope provided by the *Consultant* is in [ ] |
| 3 Time |  |
| If a programme is to be identified in the Contract Data | The programme identified in the Contract Data is [ ] |
| 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 [….] |
| 5 Payment |  |
| **If the *Consultant* states any *expenses*** | The *expenses* stated by the *Consultant* are   |  |  | | --- | --- | | * **item** | * **amount** | | * [ ] | * [ ] | |
|  |  |
| **If Option A or C is used** | The *activity schedule* is ]  The tendered total of the Prices is [ ] |
| **Resolving and avoiding disputes** | The *Representatives* of the *Consultant* are  *[ insert name 1 ]*   * *Address for communications [ ]*   *Address for electronic communications [ ]*  *[ insert name 2 ]*   * *Address for communications [ ]*   *Address for electronic communications [ ]* |
|  | The *Senior Representatives* of the *Consultant* are  *[ insert name 1 ]*   * *Address for communications [ ]*   *Address for electronic communications [ ]*  *[ insert name 2 ]*   * *Address for communications [ ]*   *Address for electronic communications [ ]* |
| If an *information execution plan* is to be identified in the Contract Data | The Information Execution Plan identified in the Contract Data is [ ] |
| 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*  [ ] [ ]  [ ] [ ]  [ ] [ ] |
| Data for the Schedule of Cost Components (used only with Option A) |  |
|  | The *people rates* are:  Category of person Unit Rate  [ ] [ ] [ ]  [ ] [ ] [ ]  [ ] [ ] [ ] |

Appendix 1 – List of MOD DEFCONS

|  |  |
| --- | --- |
| DEFCON | Additional Information |
| DEFCON 005J (Edn. 11/16) - Unique Identifiers |  |
| DEFCON 76 (Edn. 06/21) – Contractor's Personnel at Government Establishments |  |
| DEFCON 501 (Edn. 10/21) - Definitions and Interpretations | "Authority" means "Client"  "business day" and "working day" mean "Working Day"  'the Contract' means "the contract as described in the Form of Agreement".  'Contractor' means "Consultant"  'Project Manager' and 'Equipment Support Manager' and Representative of the Authority mean "the Service Manager".  'Services' means "services". |
| DEFCON 503 (Edn 07/21) – Formal Amendments to the Contract |  |
| DEFCON 513 (Edn 07/21) - Value Added Tax |  |
| DEFCON 514 (Edn 08/15) – Material Breach |  |
| DEFCON 515 (Edn 06/21) - Bankruptcy and Insolvency |  |
| DEFCON 516 (Edn 04/12) – Equality |  |
| DEFCON 518 (Edn 02/17) - Transfer |  |
| DEFCON 520 (Edn 08/21) - Corrupt Gifts and Payments of Commission |  |
| DEFCON 522 (Edn 11/21) - Payment and Recovery of Sums Dues |  |
| DEFCON 526 (Edn 08/02) - Notices |  |
| DEFCON 527 (Edn 09/97) - Waiver |  |
| DEFCON 531 (Edn. 09/21) - Disclosure of Information |  |
| DEFCON 532A (Edn. 09/21) - Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority) |  |
| 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 – Child Labour and Employment Law |  |
| DEFCON 566 (Edn 10/20) - Change of Control of Contractor |  |
| DEFCON 602A (Edn 12/17) Quality Assurance (With Deliverable Quality Plan) |  |
| DEFCON 604 (Edn 06/14) - Progress Reports |  |
| DEFCON 608 (Edn. 07/21) - Access and Facilities to be Provided by the Contractor |  |
| DEFCON 632 (Edn 11/21) - Third Party Intellectual Property - Rights and Restrictions |  |
| DEFCON 642 (Edn 07/21) - Progress Meetings |  |
| DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5m |  |
| DEFCON 658 (Edn 09/21) – Cyber |  |
| DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements |  |
| DEFCON 687A (Edn 06/21) - Provision of A Shared Data Environment Service |  |
|  |  |

1. [↑](#footnote-ref-2)