

**Crown Commercial Service**

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**CONSTRUCTION PROFESSIONAL SERVICES FRAMEWORK SCHEDULE 5**  
**TEMPLATE CALL OFF AGREEMENT (INCORPORATING THE NEC3 PROFESSIONAL SERVICES CONTRACT**  
**APRIL 2013) AND CONTRACT DATA**

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**Date: 27<sup>th</sup> April 2023**

**FORM OF AGREEMENT**

**Incorporating the NEC3 Professional Services Contract April 2013**

**Between**

**The Secretary of State for Defence**

**And**

**WSP UK Limited**

**For the provision of**

**Phase One and Phase Two Land Quality Assessment at MoD Donnington**

**THIS AGREEMENT is made the 27<sup>th</sup> Day of April 2023**

**PARTIES:**

1. **The Ministry of Defence – Defence Infrastructure** acting as part of the Crown (the "**Employer**"); and
2. **WSP UK Limited** which is a company incorporated in and in accordance with the England (Company No. **01383511** whose registered office address is at WSP House, 70 Chancery Lane, London WC2A 1AF (the "**Consultant**").

**BACKGROUND**

- (A) 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.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM6165 which is dated 3<sup>rd</sup> November 2021 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) The *Employer*, 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 *Employer's* construction professional services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).]<sup>1</sup>
- (D) On the 17<sup>th</sup> March 2023 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. The *Employer* 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 Services 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 NEC3 Professional Services Contract April 2013 and incorporating the following Options:

W1

Option X2 and X20

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 NEC3 Professional Services Contract April 2013 Edition to "the contract" are references to this contract.

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

### **General note**

Access to the NEC suite of contracts, including guidance and membership details can be found via the NEC Website: <https://www.neccontract.com/>

Additionally, Crown Commercial Service has worked together with NEC to provide discounted access to the suite of contracts . Further information can be found on the Project Management and Full Design Team Services Framework Agreement Webpage:

<http://ccs-agreements.cabinetoffice.gov.uk/project-management-and-full-design-team-services-rm3741>

### **Executed under hand**

### **Signed On Behalf of The Secretary of State for Defence**

PRINT Name:

POSITION:

SIGNATURE

DATE: 27<sup>th</sup> April 2023

**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 *Employer*

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option A dispute resolution Option W1 and secondary Options X2 and X20 and Z of the NEC3 Professional Services Contract (April 2013).

- The *Employer* is **Ministry of Defence -Defence Infrastructure Organisation**

- The *Adjudicator* is The Chartered Institute of Arbitrators

The *services* are For the Provision of **Phase One and Phase Two Land Quality Assessment at MoD Donnington.**

- The Scope of Works is in the enclosed Statement of Requirements.
- The *language of this contract* is English.
- *The law of the contract* is the law of England and Wales.
- The *period for retention* is 6 years following Completion or earlier termination.
- The *Adjudicator nominating body* is *Chartered Institute of Arbitrators*
- The *tribunal* is arbitration

- 2 The Parties' main responsibilities**
- The *Employer* provides access to the following persons, places and things
    - access to **MoD Donnington**  
access date **from 1<sup>st</sup> May 2023**

- 3 Time**
- *The starting date* is 1<sup>st</sup> May 2023
  - The *Consultant* submits revised programmes at intervals no longer than one month.
  - *The end date* is 31<sup>st</sup> December 2023.

- 4 Quality**
- The quality policy is as per DEFCON 602B (Edn 12/06) - Quality Assurance (Without Quality Plan)

- The *defects date* is four weeks after Completion of the whole of the *services*.

## 5 Payment

- The *assessment interval* is 30 days after date of invoice.
- The *currency of this 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.]

## 8 Indemnity, insurance and liability

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

event	cover	Period
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£5,000,000.00 (Five Million Pounds) in respect of each claim, without limit to the number of claims 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 <i>starting date</i> until 6years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	As required under Framework Agreement or such higher figure as may be appropriate.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As required under Framework Agreement or such higher figure as may be appropriate.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

- *The Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to £5,000,000.00 in the aggregate.

**If the *tribunal* is arbitration**

- The *arbitration procedure* is the London Court of International Arbitration Rules;
- The number of arbitrators shall be one.
- The place where arbitration is to be held is London.
- The language to be used in the arbitration proceedings shall be English
- If the parties cannot agree the identity of the arbitrator then the nominating body shall be: Chartered Institute of Arbitrators.

**If Option A is used:**

- The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than four weeks.

**Option X2 If Option X2 is used**

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

**Option X20**

**If Option X20 is used (but not if Option X12 is also used)**

- A report of performance against each Key Performance Indicator is provided at intervals of one months.



- Option Z**
- The *additional conditions of contract* are as selected below and as detailed in the appended Standard Boilerplate Amendments.
  - **Where there is a discrepancy between an NEC3 term, and a Defence Condition (DEFCON), the DEFCON will take precedence.**

**Contract Data  
relating to Z clauses**

<b>Option Z2</b>	<b>Identified and defined terms</b> Applies
<b>Option Z4</b>	<b>Admittance to Employer's Premises</b> Applies
<b>Option Z5</b>	<b>Prevention of fraud and bribery</b> Applies
<b>Option Z6</b>	<b>Equality and diversity</b> Applies
<b>Option Z7</b>	<b>Legislation and Official Secrets</b> Applies
<b>Option Z8</b>	<b>Conflict of interest</b> Applies
<b>Option Z9</b>	<b>Publicity and Branding</b> Applies
<b>Option Z10</b>	<b>Freedom of information</b> Applies
<b>Option Z14</b>	<b>Security Requirements</b> Does Not Apply
<b>Option Z16</b>	<b>Tax Compliance</b> Applies
<b>Option Z22</b>	<b>Fair payment</b> Applies

<b>Option Z44</b>	<b>Intellectual Property Rights</b> Does Not Apply
<b>Option Z45</b>	<b>HMRC Requirements</b> Does Not Apply
<b>Option Z46</b>	<b>MoD DEFCON Requirements</b> Applies  This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFFORMs as detailed at <a href="https://www.gov.uk/guidance/knowledge-in-defence-kid">https://www.gov.uk/guidance/knowledge-in-defence-kid</a> MoD DEFCONs and DEFFORMS take precedent.
<b>Option Z49</b>	<b>Change of Control</b> Applies
<b>Option Z50</b>	<b>Financial Standing</b> Applies
<b>Option Z51</b>	<b>Financial Distress</b> Applies
<b>Option Z52</b>	<b>Records, audit access and open book data</b> Applies
<b>Option Z100</b>	<b>Data Protection (GDPR)</b> Applies
<b>Option Z101</b>	<b>Cyber Essentials</b> Applies;

***Other Additional  
conditions of  
contract***

DEFCON 5J (Edn 18/11/16) - Unique Identifiers  
DEFCON 76 (Edn 11/22) - Contractor's Personnel at Government Establishments

**DEFCON 501 (Edn 10/21) - Definitions and Interpretations**  
**DEFCON 513 (Edn 04/22) - Value Added Tax**  
**DEFCON 514 (Edn 08/15) - Material Breach**  
**DEFCON 516 (Edn 04/12) - Equality**  
**DEFCON 522 (Edn 11/21) - Payment and Recovery of Sums Due**  
**DEFCON 530 (Edn 12/14) – 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 602B (Edn 12/06) - Quality Assurance (Without Quality Plan)**  
**DEFCON 604 (Edn 06/14) - Progress Reports**  
**DEFCON 642 (Edn 07/21) - Progress Meetings**  
**DEFCON 649 (Edn 12/21) - Vesting**  
**DEFCON 656A (Edn 08/16) – Termination for Convenience**  
**DEFCON 658 (Edn 09/21) - Cyber – Note: Risk Assessment is Low. Risk Assessment Ref: RAR-434643797**  
**DEFCON 670 (Edn 02/17) – Tax Compliance**  
**DEFCON 703 (Edn 06/21) - Intellectual Property Rights - Vesting In The Authority**

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

**1 Statements given in all contracts**

- The *Consultant* is  
Name ...WSP UK Limited.....  
Address 11 Westferry Circus, 3rd Floor, London, E14 4HD

- The *key people* are
- Name:
- Job: Project Manager
- Responsibilities: Project Management and Technical support
- Experience: 25 years contaminated land assessment (see CV)
- Name:
- Job: Project Director
- Responsibilities: Project Direction and Technical support
- Experience: 27 years contaminated land assessment (see CV)
- Name:
- Job: Associate Director
- Responsibilities: Technical advice
- Experience: 24 years contaminated land assessment (see CV)
- The *staff rates* are:
- Name/job title
- Rate

- The following matters will be included in the Risk Register
  - Timely site access and provision of site records including service plans ahead of mobilising to site for the intrusive works
  - Timely and consecutive access to site areas for intrusive works and monitoring
  - A location for welfare and stores within the site grounds during the fieldwork

## Optional statements

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

The *completion date* for the whole of the services is December 2023 (as defined by SoR)

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

- The programme identified in the Contract Data is in Tender proposal Form (Section 5) – 25 weeks to draft reports

*Include where expenses are being stated by the Consultant*

**If the *Consultant* states any expenses**

- The *expenses* stated by the *Consultant* are

item	amount
Local Authority search	
Base mapping	
Travel (mileage)	
Subsistence and accommodation	
Ground investigation sub-contractors (drillers, laboratories, surveyors, welfare, equipment)	See tender Proposal Form

*[Include if the Consultant requires additional access]*

**If the *Consultant* requires additional access**

The *Employer* provides access to the following persons, places and things

access to	access date
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Site records including previous reports.....3 weeks from commissioning

DSTL record search.....5 weeks from commissioning

Utility service plans.....4 weeks Before mobilising for GI

Site areas for intrusive works and monitoring..... During fieldwork

A location for welfare/stores within the site grounds... During fieldwork

Site contact details for access onto site .....2 weeks before GI

**If Option A or C is used**

- The *activity schedule* is .....

	Activity	Date	Price £ (ex VAT)

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1	Data acquisition and initial review including site visit	9 <sup>th</sup> June	
2	Phase 1 LQA assessment	30 <sup>th</sup> June 2023	
3	Procurement, health and safety and management pre-mobilisation including pre-GI visit	25 <sup>th</sup> August 2023	
4	Ground investigation	2 <sup>nd</sup> October 2023	
5	Monitoring	10 <sup>th</sup> November 2023	
6	Draft LQA report and tech note and H&S File	4 <sup>th</sup> December 2023	
7	Final LQA report and tech note	31 <sup>st</sup> December 2023	

- The tendered total of the Prices is .....

**If Option Y(UK)1 is used**

- The *project bank* is .....
- The *named suppliers* are .....

**Milestone Payment Plan**

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<b>Milestone</b>	<b>Description</b>	<b>Due Date</b>	<b>Amount £</b>
1.	On Completion of Activity 1 and 2 which includes Data acquisition, initial review, including site visit and Phase 1 LQA assessment	30 <sup>th</sup> June 2023	
2	On Completion of Activity 3,4 and 5 which includes Procurement, health and safety and management pre-mobilisation including pre-GI visit. Ground investigation and Monitoring	10 <sup>th</sup> November 2023	
3	On Completion of Activity 6 and Acceptance by DIO of Draft LQA Report & Draft Technical note and H&S File	4 <sup>th</sup> December 2023	
4	On Completion of Activity 7 and Acceptance by DIO of Final Report and Final Technical Note.	31 <sup>st</sup> December 2023	