

Contract Title – BMS Resilience Review

Supplier – Perfect Circle via Scape Framework

Contract Start Date – 06/06/2024

Contract End Date – 30/09/2024

Contract Value - £22,351,54 (Ex Vat)

This contract was awarded under the Terms and Conditions of NEC4 Professional Service Contract (Short Form) Option A and utilised the copyrighted NEC Forms of Contract.

The following amendments/additions were made by DSTL to the standard Terms and Conditions of NEC4 Professional Service Contract (Short Form) -

11.2 (28) Insert new definition:

“Information” means information of any nature, including information in the form of data, databases, software (excluding third party software), designs, models, interventions, drawings, details, plans, reports, records, calculations, schedules, specifications, bills of quantities, levels and setting out details and other documents (whether or not in hard or electronic format).

11.2(29) Insert new definition:

“Documents” means all Information of any nature whatsoever provided by or used by or on behalf of the Consultant in the course of performing its obligations under this contract”.

11.2 (30) Insert new definition:

“Foreground Information” means all Information in Documents which is generated in the performance of the services under this contract.

11.2 (31) Insert new definition:

“Background Information” means all Information in Documents which is not Foreground Information.

11.2 (32) Insert a new defined term as follows:

“Transparency Information” shall mean the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Consultant under the Contract

11.2(33) Insert a new definition:

“Employer’s IT Systems” means the computer hardware and software and networks used by the Employer in the course of its business.

11.2(34) Insert a new definition:

“Employer’s Security Procedures” shall mean any security procedure specific to any Employer premises or data.

11.2(35) Insert a new definition:

“Change of Control” means where that person who "controls" the Consultant ceases to do so or where another person(s) acquires "control" of the Consultant, where "control" means the power to ensure that the affairs of the Consultant are conducted in accordance with the wishes of that person by virtue of the holding of shares, or the possession of voting powers in, or in relation to, the Consultant, or by virtue of any power or Employer conferred by the constitutional corporate, or any other documents, regulating the Consultant.

11.2(36) Insert a new definition:

“Party” means either the Client or the Consultant.

11.2(37) Insert a new definition:

“Employer” means either the Client.

11.2(38) Insert a new definition:

“Prohibited Materials” means materials not in conformity with the law of the contract, European and/or British standards, and codes of practice or which at the date of use are deleterious to the health and safety and/or to the durability of buildings and/or in the particular circumstances in which those materials are to be used.

11.2(39) Insert a new definition:

“Working Days” means Mondays to Fridays 0830 hours to 1700 hours excluding public bank holidays.

## 2 The Parties’ main responsibilities

21. Amend as follows:

22.4 Add a new clause 22.4:

“The Employer may refuse admission to their premises or require the removal of any person engaged in the performance of the services. The decision of the Employer on whether any person is to be refused admission or removed shall be final and conclusive and the Employer shall not be obliged to give reason for its decision. If the Employer's decision is unlawful or manifestly unreasonable having regard to the competence, conduct and performance of the person concerned the Employer's actions shall be treated as a Compensation Event.”

23.4 Add a new sub clause:

“The Consultant shall carry out the services and, to the extent reasonably practical considering their nature, the services so as to cause minimum disruption to the Employer's activities on their premises and elsewhere. If the Consultant anticipates any such disruption, the Consultant will issue an early warning notice to enable the Employer to plan in advance, if necessary, for such disruption.”

23.5 Add a new sub clause:

“The Consultant shall co-operate with the requirements of all Employer boards of inquiry and shall use all reasonable endeavours to procure the attendance of such of its employees, agents or Subconsultants who may be invited by the Employer to attend as witnesses at boards of inquiry or similar proceedings. This obligation shall survive the expiry or early termination of the services. The Employer shall reimburse the Consultant their reasonable external costs of such attendance.”

23.6 Add a new sub clause:

“The Consultant acknowledges that it will not have exclusive rights to occupy any accommodation provide by the Employer or the Employer and that any such accommodation will only be used for the purpose of the services.”

23.7 Add a new sub clause:

“All fossils, antiquities, and other objects having antiquarian, artistic, historic, archaeological or monetary value, which may be found on, or at the Employer premises shall remain the property of the Employer.”

24.6 Add a new sub clause 24.6:

“Each Subconsultant contract shall contain equivalent contractual obligations as are imposed on the Consultant pursuant relating to fraud, Employer's Security Procedures, use of Employer's IT Systems, intellectual property rights confidentiality, publicity and law of the contract.”

## 7 Rights to material

70 Delete and replace with:

70.1 All Foreground Information and intellectual property rights therein shall vest in and be the property of the Employer on their creation.

70.2 To the extent that any intellectual property rights in any of the Foreground Information does not automatically vest in the Employer, the Consultant shall with full title guarantee, assign or procure the assignment to the Employer of all intellectual property rights in such Foreground Information free from lien, charge or encumbrance.

70.3 The Employer hereby grants to the Consultant for the contract period and free of charge a non-exclusive royalty free licence, together with a sub-licence to Subconsultants, to use such of the Foreground Information as the Consultant reasonably requires for the purposes of performing the services.

70.4 The Consultant hereby grants to the Employer, subject to the rights of third parties, a perpetual, irrevocable and royalty free licence to use the Background Information and any intellectual property rights therein as required to use the Foreground Information and/or the Documents for any purpose.

70.5 The Consultant shall highlight to the Employer any third party intellectual property rights which appear to be relevant to the Employers use of the Foreground Information and/or the Documents, and following consultation with the Employer and insofar as reasonably practicable the Consultant shall secure a licence on behalf of the Employer to use the third party intellectual property rights.

70.6 The Consultant shall, following consultation with the Employer and insofar as reasonably practicable, secure a licence on behalf of the Employer to use any third party software (except for commonly used and commercially available software) used by the Consultant and its Subconsultants in performing the services,

70.7 All licences shall be purchased in consultation with the Employer so that licence terms appropriate to the intended use of such intellectual property rights or software are obtained.

70.8 The Consultant shall indemnify the Employer and keep the Employer fully indemnified against all losses which the Employer may sustain or incur that arise out of allegations that the Employer has infringed the intellectual property rights of any third party in using the Documents in accordance with this Clause.

70.9 The Consultant shall mark any copyright works comprising Foreground Information with the legend © Crown Copyright (insert year of generation of the works)

72 Insert new clause 72 “Disclosure”:

72.1 Except with the written consent of the Employer, the Consultant shall not disclose the services to any person other than a person employed by the Consultant or a Subconsultant. Disclosure shall be confined to those members of staff whose access to the information is essential for performance of the services.

72.2 Subject to clause 72.5, 72.6 and 72.7, each Party:

- a) shall treat in confidence all Information it shall receive from the other;
- b) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that the Consultant may disclose Information in confidence, without prior consent, to such persons as and to such extent as may be necessary for the performance of the services;
- c) shall not use any of that information otherwise than for the purpose of performing the services; and
- d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this agreement.

72.3 The Consultant shall take all reasonable precautions necessary to ensure that all the Information disclosed to the Consultant by or on behalf of the Employer under or in connection with this agreement:

- a) is disclosed to its employees and Subconsultants only to the extent necessary for the performance of the services;
- b) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for performing work or having work performed for the Employer under this agreement or any subconsultancy agreement.
- c) is returned to the Employer by the Consultant on Completion of the whole of the Services

72.4 The Consultant shall ensure that its employees, and its Subconsultants and their employees, are aware of its arrangements for discharging the obligations under clause 72.1, 72.2 and 72.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

72.5 Clause 72.2 and 72.3 shall not apply to the Information to the extent that either Party:

- a) exercises rights of use or disclosure granted otherwise than in consequence of, or, this agreement;
- b) has the right to use or disclose the Information in accordance with other conditions of this agreement
- c) can show:
  - i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this agreement or any other agreement between the Parties;
  - ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the services;
  - iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure; or
  - iv) from its records that the same information was derived independently of that received under or in connection with the services; provided the relationship to any other Information is not revealed.

72.6 Neither Party shall be in breach of this Clause 72 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosures shall in no way diminish the obligations of the Parties under this Clause.

72.7 The Employer shall not be in breach of this Clause 72 where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance with the Act or the Regulations, the Employer shall consult the Consultant where the Employer is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Consultant of any decision to disclose the Information. The Consultant acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Employer shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this condition shall affect the Consultant's rights at law.

72.8 Nothing in this Clause shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

## 90 Termination

90.3 Add new bullet:

"any Change of Control"

90.5 Add new clause as follows:

"The Parties shall continue to perform their obligations under this contract, notwithstanding the serving of a termination notice, until the termination of the contract becomes effective in accordance with the provisions of the relevant Clause."

90.6 Add new clause as follows:

Save as otherwise expressly provided in this contract, termination of this contract shall be without prejudice to any accrued rights and obligations under this contract at the date of termination.

90.7 Add new clause as follows:

Termination of this contract shall not affect the continuing rights and obligations of the Employer and the Consultant with respect to warranties and disclaimers, Compensation Events, Payment, Indemnification and Insurance, Use of Information Technology and Intellectual Property Rights, Dispute Resolution, Confidentiality and Publicity , Transfer, Mitigation, Governing Law, No Consequential Loss, Limit of Liability, Sole Remedy and under any other provision of this contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## Option Z Additional conditions of contract

Z1.1 The additional conditions of contract stated in the Contract Data are part of this contract.

Z1A The Consultant warrants that they have not done and will not do anything that would result in a breach of the Employer's Security Procedures or the Official Secrets Act.

Z2 The Consultant warrants that it has not done and will not do any of the following (hereafter referred to as "Prohibited Acts"):

a) offered, given or agreed to give to any Crown servant any gift or consideration of any kind as an inducement or reward;

i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or

ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown;

b) entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Employer, and in respect of any breach of any of the above warranties and undertakings the Consultant acknowledges that the Employer will be entitled to claim damages against the Consultant.

Z3 In performing the services the Consultant shall not use Prohibited Materials or produce designs that may use Prohibited Materials.

Z4 The Consultant shall inform the Employer, as soon as practicable, in writing of any Change of Control.

Z5 Where any investigation is conducted or proceedings are brought which arise directly or indirectly out of any act or omission of the Consultant, its agents or Subconsultants, or key people, and where there is a finding against the relevant party in such investigation or proceedings, the Consultant shall indemnify the Employer and the Employer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Employer may have been ordered or required to pay to a third party.

Z6 The Consultant shall ensure at no extra cost to the Employer that for the purposes of carrying out any audit, the Employer's internal and nominated external auditors are given access to inspect and examine such documents as may reasonably be required which are owned, held or otherwise within the control of the Consultant. The Consultant shall also promptly provide such oral and written explanations as it is considered necessary in order to assist the auditors referred to above to carry out their functions.

Z7 The Consultant shall for the purpose of carrying out any audit provide, at no additional cost to the Employer, such facilities for representatives of the Employer as the Employer may reasonably require.



Z8 The Consultant shall, hold harmless and indemnify the Employer on demand from and against all Losses incurred by or imposed upon the Employer as a result of:

- 1) death or personal injury;
- 2) loss, damage to or loss of use of property or assets (including property or assets belonging to the Employer or for which it is responsible);
- 3) breach of statutory duty;
- 4) any third party claims arising out of, or in consequence of, the performance or non-performance by the Consultant, arising from any breach of contract, tort (including negligence) or breach of statutory duty by the Consultant.

#### Z9 Fraud

At all stages of its involvement under and in connection with the services, the Consultant shall take all practicable steps to prevent fraud and/or the risk of fraud arising. If in the reasonable opinion of the Employer the Consultant commits any fraud (as defined by the Law of the Contract) in relation to the services or any contract with the Employer or any other public body then the Employer may terminate the services for the Consultant's default by giving 10 Working Days' notice to the Consultant. The Consultant shall, keep and maintain all relevant records, invoices, approvals, notes; minutes of meetings and all such other original documents as may be required to verify the services carried out by the Consultant and its Subconsultants so that they may be provided upon request by the Employer. The Consultant shall immediately report to the Employer any circumstances giving rise to fraud within its own organisation, that of its Subconsultants, the Employer or otherwise in relation to the services and shall provide all such relevant information which may assist the Employer in dealing with such report efficiently and effectively. The Employer shall be entitled to set-off, deduct, abate or recover as a debt against the Consultant all losses howsoever arising in connection with or sustained as a consequence of fraud including all associated investigation costs.

#### Z10 Use of Information Technology (IT)

The Consultant and its Subconsultants may use any of the Employer's IT Systems including connections to the internet or intranet services, with express permission from the Employer, and appropriate security clearance and only for the performance of the services. Use of a third party's computer equipment and software, including any connections to the internet or intranet services, on the Employer's premises, is subject to the approval of the Employer and said third party. The Consultant shall procure that its employees, and its Subconsultants and their employees, comply with the Employer's policies, procedures and instructions in respect of computer hardware and software, including any connections to the internet or intranet services. The Employer may on reasonable notice from time to time make reasonable or necessary amendments to such policies, procedures and instructions. The Consultant shall take all reasonably practicable precautions to ensure that its employees, and its Subconsultants and their employees, do not use computer hardware or software, including any connections to the internet or intranet services, unlawfully or for unlawful purposes. The Consultant shall not cause or allow any of its employees, or its Subconsultants and their employees, to bring the reputation of the Employer or Employer into

disrepute by any action, activity or behaviour in connection with computer hardware or software. Failure by the Consultant to comply with this Clause shall constitute a material breach of this agreement which may lead to termination.

#### Z11 Transfer

Neither Party to this contract shall give, bargain, sell, assign, or otherwise dispose of this contract or any part thereof, or the benefit or advantage of this contract or any part thereof, without the previous consent in writing of the other Party.

#### Z12 Mitigation

Each of the Parties shall at all times take all reasonable steps to minimise and mitigate any loss which the relevant Party is entitled to recover from the other Party pursuant to this contract.

#### Z13 The Public Contracts Regulations 2015

The Employer may terminate the Consultant's obligation to provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply. If the Employer terminates under the provisions of paragraph 73(1) (b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Consultant at the Contract Date, the procedures and amounts due on termination are the same as if the Consultant has substantially failed to comply with his obligations. If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Employer no longer requires the services. The Consultant does not appoint a Subconsultant or supplier if there are compulsory grounds for excluding the Subconsultant or supplier under regulation 57 of the Public Contracts Regulations 2015.

The Consultant includes in any subcontract awarded by him provisions requiring that

- payment due to the Subconsultant or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Consultant to make earlier payment to the Subconsultant or supplier,
- invoices for payment submitted by the Subconsultant or supplier are considered and verified by the Consultant in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subconsultant or supplier for work included in this contract includes provisions to the same effect as these provisions.

#### Z14 Russian/Belarussian products and/or services

The Contractor shall, and shall procure that their Sub-contractors shall, notify the Authority in writing as soon as they become aware that:

- a. the Contract Deliverables and/or Services contain any Russian/Belarusian products and/or services; or
- b. that the Contractor or any part of the Contractor's supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian/Belarusian person or entity. Please note that this does not include companies:
  - (1) registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and/or
  - (2) which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.

The Contractor shall, and shall procure that their Sub-contractors shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian products, services and/or entities and shall provide all reasonable assistance to the Authority to understand the nature, scope and impact of any such products, services and/or entities on the provision of the Contract Deliverables and/or Services.

The Authority shall consider the notification and information provided by the Contractor and advise the Contractor in writing of any concerns the Authority may have and/or any action which the Authority will require the Contractor to take. The Contractor shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within 14 business days of receipt of the Authority's written concerns, for the Authority's consideration.

The Contractor shall include provisions equivalent to those set out in this clause in all relevant Sub-contracts."

**Z15 Contractors Personnel at Government Establishments**

The Consultant shall comply with DEFCON 76 which can be found at [www.gov.uk](http://www.gov.uk)

**Z16 Cyber**

The Consultant shall comply with DEFCON 658 which can be found at [www.gov.uk](http://www.gov.uk)

**Z17 Official Sensitive Security Requirements**

The Consultant shall comply with DEFCON 660 which can be found at [www.gov.uk](http://www.gov.uk)

**Z18 Transparency**

The Consultant shall comply with DEFCON 539 which can be found at [www.gov.uk](http://www.gov.uk)