

Date 22/06/2021

Purchase Order Number: 1000160272

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract April 2013

Between

Defence and Science Technology Laboratory (Dstl)

And

Building Design Partnership Limited (BDP)

For the provision of

ESTATES MASTER PLANNING SERVICES

THIS AGREEMENT is made the 22nd day of June 2021

PARTIES:

1. **Dstl** whose offices are located at Dstl Porton Down, Salisbury, SP4 0JQ (the "*Employer*"); and
2. **BDP** which is a company incorporated in and in accordance with the laws of **England** (Company No. **02207415** whose registered office address is at **PO BOX 85 11 Ducie Street, Piccadilly Basin, Manchester, M60 3JA** (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 project management and full design team services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number **RM3741**) which is dated 4th May 2017 (the "**Framework Agreement**"). In the Framework Agreement, the *Consultant* is identified as the "Supplier".
- (C) On the 3rd March 2021 the *Employer* 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* project management and full design team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement) under reference PMFDTS-1087-2020.
- (D) On the 22nd March 2021 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 Call Off Contract 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.
4. 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.

5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.

6. The Contract Schedules are:

Schedule 1 – Contract Authority Scope

Schedule 2 – Methodology and Supply Chain Management

Schedule 3 – Project Plan

Schedule 4 – Pricing

Schedule 5 – Rate Card for Phase 2

Schedule 6 - Cyber

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 *Employer*

1 General The *conditions of contract* are the core clauses and the clauses for main Options A and E, dispute resolution Option W2 and secondary Options X2, X10, Y(UK)2, Y(UK)3 and Z of the NEC3 Professional Services Contract (April 2013).

The *Employer* is **Dstl** of Porton Down, Salisbury, Wiltshire, SP4 0JQ

- The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the *Chartered Institute of Arbitrators* or nominated by the *Adjudicator nominating body* in the absence of agreement.
- The Scope is in Volume 4 of the ITT [will be identified in a Schedule in the Contract Document]
- The language of this contract is **English**.
- *The law of the contract* is the law of **England and Wales**
- The *period for reply* is **two weeks**.

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

- The *Adjudicator nominating body* is the Chartered Institute of Arbitrators
- The *tribunal* is arbitration
- The following matters will be included in the Risk Register
 - Limitations of information on the current estate, i.e. data which is not available, is incomplete, is difficult to gather particularly in the timeframe, or that cannot be considered fully up-to-date and accurate, makes it difficult to establish firm baselines on which to plan
 - Difficulty in securing access to stakeholders to support e.g. data gathering, options appraisal, decision making, prolongs the Master Plan development process.
 - Stakeholders provide conflicting objectives which take additional time to reconcile
 - The difficulties in predicting future demand and direction makes it difficult to derive a clear master plan
 - The Master Plan as developed does not adequately address Dstl's strategic challenges and/or wider policy or regulatory demand

- Constraints associated with e.g. current site layout, ongoing works, business demand, and available resources make it difficult to develop and deliver the Master Plan.

2 The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things in connection with the services:
 - Access to relevant Estate-related information, e.g. key projects in train, assessments of estate condition, site layouts, infrastructure arrangements, and any other relevant reports, risk assessments and Dstl or MOD policies. All data provided will only be at up to Official Sensitive and subject to satisfactory information management arrangements. Within one month of project start for the initial set, and then as the project develops.
 - Access to relevant Dstl corporate documentation relevant to this task (e.g. reports, strategy documents). All data provided will only be at up to Official Sensitive and subject to satisfactory information management arrangements. Within one month of project start for the initial set, and then as the project develops.
 - Access to the Dstl sites at Porton Down and Portsdown West in connection with the Services and subject to due notice and security and safety constraints. Access will generally be escorted. Within one week of request.
 - Access to individual Dstl buildings and facilities in connection with the Services and subject to due notice and security and safety constraints. Access will generally be escorted. Within one week of request.
 - Access to relevant Subject Matter Experts in e.g. estate operations, safety, security, S&T delivery, people matters, etc. to discuss matters relevant to the services
 - Access to relevant Dstl stakeholders representing the interests outlined in Vol 4, and facilitation (where practicable) of access to non-Dstl stakeholders.

Where information artefacts are provided to the Contractor these will be recorded in a GFI register and must be managed by the Contractor in accordance with the security requirements.

The following items have already been provided to go into the GFI register:

Item	Classification
[REDACTED]	Official-Sensitive
[REDACTED]	Official

[REDACTED]	Official-Sensitive
[REDACTED]	Official-Sensitive
[REDACTED]	Official-Sensitive
[REDACTED]	Official

- 3 Time**
- *The starting date is 01/07/2021*
 - *The Consultant submits revised programmes at intervals no longer than one month.*

- 4 Quality**
- *Not used*

- 5 Payment**
- *The assessment interval is as per the Payment Schedule in Schedule 4 (Phase 1)*
 - *For Phase 2 – the payment schedule will be agreed as part of each workpackage, based on the rate card in Schedule 5.*
 - *The period for payment is 30 days*
 - *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.*
 - *Purchase Order number 1000160272 must be quoted on all invoices to ensure prompt payment.*

- 8 Indemnity, insurance and liability**
- *The amounts of insurance and the periods for which the Consultant maintains insurance are*

Event	cover	Period
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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 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 where a lower level may apply in the aggregate	from the <i>starting date</i> until 6 years 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 Schedule 14 (Annex 1 - Part A)	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 Schedule 14 (Annex 1 - Part C)	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 £1,000,000

Optional Statements

If the *Employer* has decided the *completion date* for the whole of the *services*

- The *completion date* for the whole of the *services* is 30/06/2024, unless the additional two 12 month options are exercised.

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 14 days

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**

Option X2 If Option X2 is used

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

Option X10 If Option X10 is used

- The *Employer's Agent* is
- Name [REDACTED]
- Address Porton Down Wiltshire

The authority of the *Employer's Agent* is to carry out all duties of the *Employer* under the Contract with the exception of termination.

Option Y(UK)3 • If Option Y(UK)3 is used

term

person or organisation

none

none

- Additional Z clauses are included

Appendix 1 – Option Z

1. The additional Conditions of Contract are

1 General

11.2(14) 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 (15) 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 *Employer* to the *Consultant* under the Contract

11.2(16) 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(17) Insert a new definition:

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

11.2(18) 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(19) Insert a new definition:

“Party” means either the *Employer* or the *Consultant*.

11.2(20) 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(21) Insert a new definition:

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

11.2(22) Insert a new definition:

“Data Protection Legislation” means:

(i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then

(ii) any successor legislation to the GDPR or the Data Protection Act 1998;”

11.2(23) Insert a new definition:

“Data Subject” has the meaning given to it in the Data Protection Legislation.”; and

11.2(24) Insert a new definition:

“Personal Data” has the meaning given to it in the Data Protection Legislation,”

12.5 Insert a new clause 12.5:

“A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it.”

13.9 Insert a new clause 13.9:

“The following communications shall be deemed to have no effect if made by electronic mail transmission:

- any notification of a wish to terminate this contract or the employment of the *Consultant* under it;
- any notification by the *Consultant* of his intention to suspend performance of his obligations under this contract;
- any invoking by either party of the procedures applicable under this contract to the resolution of disputes or differences;
- any agreement between the parties amending the provisions of this contract”.

2 The Parties’ main responsibilities

21.3 Insert a new clause 21.3:

“The *Consultant* performs the Services in accordance with relevant laws and regulations, statutory and other requirements (“Laws”) and (to the extent that the *Consultant* can control the same) such that the product of the Services complies with all relevant Laws.”

22.3 Add a new clause 22.3:

“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 provided by the *Employer* and that any such accommodation will only be used for the purpose of the *services*."

24.4 Add a new sub clause 24.4:

"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."

5 Payment

50.3 Amend as follows:-

Add at the end of the 1st bullet point "and"

Delete 2nd bullet point "the amount of *expenses* properly spent by the *Consultant* in Providing the Services and"

51.6 Insert a new clause as follows:

"In addition to any other legal rights and remedies of the *Employer*, whenever any sum of money is recoverable from or payable by the *Consultant* under this contract that sum may be deducted from any sum then due, or which at any time thereafter becomes due to the *Consultant* under this contract provided that the *Employer* notifies the *Consultant* in writing not later than three days before the final date for payment of the amount to be paid and the basis on which it is calculated".

51.7 Insert new clause as follows:

"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.”

7 Rights to Material

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 In accordance with Clause 10.1 and without affecting either Party's statutory rights, in the event of a dispute the Parties will meet to agree if a formal dispute resolution is required and which procedure will be used.

Z6 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.

Z7 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.

Z8 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.

Z9 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*.

Z10 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.

Z11 Continued effect

Notwithstanding any breach of this contract by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this contract as being in full force and effect and to enforce its rights under this contract. The failure of either Party to exercise any right under this contract, including any right to terminate this contract and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

Z12 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.

Z13 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.

Z14 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.

Z15 Disputes

In accordance with Clause 10.1 and without affecting either Party's statutory rights, in the event of a dispute the Parties will meet to agree if a formal dispute resolution is required and which procedure will be used.

Z16 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.

If 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.

Z17 Data Protection

17.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. These clauses are in addition to, and does not relieve, remove or replace, each Party's obligations under the Data Protection Legislation. It is agreed that:

17.2 Without prejudice to the generality of clause 17.1, both Parties will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to each other for the duration and purposes of this agreement.

17.3 Without prejudice to the generality of clause 17.1, the *Consultant* shall, in relation to any Personal Data processed in connection with the performance by the *Consultant* of its obligations under this agreement:

17.3.1 process that Personal Data only on the written instructions of the *Employer* and only as required for the purpose of the performance of this agreement;

17.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the *Employer*, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

17.3.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

17.3.4 not transfer any Personal Data outside of the European Economic Area;

17.3.5 assist the *Employer*, at the *Consultant's* cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

17.3.6 notify the *Employer* without undue delay on becoming aware of a Personal Data breach;

17.3.7 at the written direction of the *Employer*, delete or return Personal Data and copies thereof to the *Employer* on termination of the agreement; and

17.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the *Employer* or the *Employer's* designated auditor.

17.4 The *Employer* does not consent to the *Consultant* appointing any third-party processor of Personal Data under this agreement.”

Z18 Electronic Communications

‘The following communications shall be deemed to have no effect if made by electronic mail transmission:

- any notification of a wish to terminate this contract or the employment of the *Consultant* under it;
- any notification by the *Consultant* of his intention to suspend performance of his obligations under this contract;

- any invoking by either party of the procedures applicable under this contract to the resolution of disputes or differences;
- any agreement between the parties amending the provisions of this contract’.

Z19 – Cyber

The *Consultant* shall comply with all of the requirements in Schedule 6 in relation to Cyber Security.

OPTION Y(UK) 3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Delete the existing wording for this Option and insert:

Y3.1 A person who is not a party to this contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract unless it is stated expressly in the Contract Data that an identified third party may enforce such rights and those rights are identified.

Y3.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

Part two – Data provided by the *Consultant*

1 Statements given in all contracts

- The *Consultant* is

Name [REDACTED]

Address 16 Brewhouse Yard, London, EC1V 4LJ

- The *key people* are

[REDACTED]

- The following matters will be included in the Risk Register
Continued availability of suitably qualified and experienced staff
Continued impact of Covid-19 restrictions
Impact of information sharing restrictions within security requirements

If Option A or C is used

- The *activity schedule* is in Schedule 4
- The tendered total of the Prices for Phase 1 is £177,935 with allowances of £46,960.00. (See Schedule 4)

Contracting Authority Scope

1. Dstl – Purpose, Role, Strategic Objectives

Dstl's **Purpose** is to deliver high-impact S&T for the UK's defence, security and prosperity. Our **Role**, as set by the Ministry of Defence, is twofold:

- **Delivering science and technology for defence and security** by maximising impact and value from the S&T Portfolio; supplying specialist S&T services which must be done in Government; providing expert and impartial advice, analysis and assurance; and integrating S&T delivered by industry, academia, wider government and its allies.
- **Stewardship of defence and security S&T capabilities** by ensuring the required capabilities are available now and in the future in line with the S&T Strategy; bringing together the right people, relationships, infrastructure, knowledge and licences to practise; maximising the effectiveness and efficiency of our S&T infrastructure and assets; working with industry, academia, wider government and its allies to access and build capability.
-

Dstl's Strategic Direction¹ sets out three Strategic Objectives (SOs) that will ensure we fulfil our Purpose and Role:

1. SO 1 : Through S&T, shape the future of defence and national security via a relentless focus on our customers' challenges and needs
2. SO 2 : Ensure defence and security can exploit the best science and technology capabilities on demand:
3. SO 3 : Become an agile organisation that is fit for the future.

These are in turn supported by nine Strategic Imperatives (SIs). The Dstl estate supports many of these, but speaks directly to four in particular:

- SI 4 - Identify the capabilities Dstl requires internally and externally to deliver the S&T strategy
- SI 7 - Develop our people, provide exciting career opportunities and improve knowledge management.
- SI 8 - Ensure safe, secure, sustainable and fit for purpose infrastructure and IT.
- SI 9 - Drive up the efficiency of our operations.

These strategic objectives and imperatives provide clear direction for Dstl. They support our delivery teams and experts who are the people best placed to identify areas where we can innovate, prioritise activity, challenge customers, communicate and drive an increase in our impact.

¹ Dstl Strategic Direction 2018-2022, see also MOD Science and Technology Strategy 2020 and Dstl Corporate Plan 2020-2025 for further information.

2. Master Plan – overall aims

Dstl is approaching completion of a series of major consolidations which has seen the organisation withdraw from multiple locations around the country to focus on a few core sites. [REDACTED].

This is therefore an opportune time for Dstl to take stock of its estate and set out how it can best support our Role and Purpose and provide the adaptability and agility to meet future demand. Our aim is to develop a Master Plan that sets firm direction for the next 5-10 years in detail, and broad direction out to 20 years.

Our overall aim covers a number of objectives as outlined later, however we are particularly interested in:

- How the estate can be best developed to respond to future change, e.g. by maximising existing capacity use, creating the space for future growth, using flexible innovative designs and investments to allow for repurposing and collaborative use of assets and facilities, etc. We don't know how or where change will come from, but we need to be prepared.
- How the estate looks and feels – this is important in portraying Dstl as one of the world's leading S&T organisations, in attracting and retaining existing and future employees, and in providing tangible evidence of our ethos and standards to our customers and suppliers.

Our ambition is for an estate that unifies the organisation and has the look and feel of an academic or research campus, so aside from the technical aspects of the masterplan creating coherency and a sense of place is important to us.

2. The Dstl Estate

Dstl is a multi-site organisation and the Master Plan must encompass the whole estate. For clarity our primary locations are:

- [REDACTED].

Dstl is also actively exploring the creation of additional enclaves or similar elsewhere in the UK to better access particular technologies and skills and better interact with key customers, suppliers and partners.

[REDACTED].

3. Service Term

Aside from Master Plan development, Dstl is interested in support over the longer term. Tenderers are therefore invited to submit proposals for services in two phases:

- **Phase 1** – Development of the Master Plan, anticipated to be completed during Year 1 of service delivery.
- **Phase 2** – Follow-on support – with proposals for support to end Year 3 with options for up to two further 12 month extensions.

Subject to the commercial process we envisage the services commencing in early FY 21/22.

4. Outputs and approach to development

4.1 Phase 1 - Development of the Master Plan and Master Plan Report

Dstl recognises Master Plan development typically follows a progressive approach broadly as set out in Annex A below. We anticipate receiving a proposal along these lines and covering the topics outlined, but the expertise in this matter lies with the Tenderer and it is for the Tenderer to propose out how they would see the plan being developed.

We require the approach to be collaborative, so working with our key stakeholders and subject matter experts to challenge assumptions and build consensus is essential. Tenderers should anticipate setting up workshops with stakeholders to cover master plan development with due regard to the themes outlined in paragraph 5, together with such other activity they deem necessary to develop options etc.

[REDACTED].

Assuming a staged approach is taken to plan development, Dstl would expect a presentation or report for approval at the end of each stage which covers progress, key findings and issues, key decisions made or required, together with a detail plan for the following stage.

Dstl will require a Master Plan report in a format it can share with appropriate stakeholders, together with management-only annexes or similar covering the high level development programme and financial model. Tenderers are to propose a form of Master Plan report which should set out the challenge and the responses to the issues outlined in this volume. Tenderers will be required to work with Dstl or its agents on the detail of report layout and design in accordance with our brand guidelines. Having viewed typical exemplars Dstl would expect to see a format covering points broadly as set out in Annex B.

4.2 Phase 2 - Follow on support

Following development of the Master Plan we will require the provision on on-going support services in two general areas:

- **Upkeep of the Master Plan** – covering an annual review for progress against plan, coherency with any changes in Dstl and MOD strategic aims, consideration of any new external factors or thinking, together with any planning adjustments needed.
- **Support to plan refinement and implementation**, e.g. to refine agreed areas of planning or complete any policy work deferred or not fully developed, to support any significant business cases, general support to strategic estate planning questions.

Precise tasking will be agreed through the tasking process. During Phase 2 Dstl will require short monthly reports summarising service elements provided, committed to, and costs incurred.

5. Key themes and issues to be explored

The Master Planning process will help Dstl understand and address a range of estate-related challenges that are important to us. In particular, we would like the plan to consider:

[REDACTED]

Dstl has a project in train considering the balance between home and office-based work and the nature of the workplace - we would look to the Contractor to contribute to this by sharing current thinking and best practice.

[REDACTED]

6. Supporting expertise and information

[REDACTED]

7. Project governance structure and key stakeholders.

Dstl is led by a Chief Executive and comprises nine divisions - five Science and Technology Divisions focusing on technical delivery with each led by a Division Head, and four Enabling Divisions which provide underpinning services each led by a Chief Officer. Key personnel from all these divisions will form the core stakeholders to be involved in the masterplanning process.

It is for the Tenderer to propose a suitable delivery structure, however from industry practice we anticipate this to be:

A **decision making board**, who are the ultimate decision making body and where the master plan and associated outputs will be endorsed. [REDACTED].

A **steering board**, comprising senior subject matter experts drawn from across Dstl and supported by the Contractor. This is seen as an active group, interacting with the Contractor to help define and understand the issues and develop and refine options and proposals using their subject expertise and their understanding of the Dstl context. [REDACTED]

A **project group**, which will manage the logistical arrangements - setting out meetings and workshops, providing information and access to SME, and administering the contract. This will require routine interaction with the Contractor.

Individual **Workshops** – where the themes and issues outlined in section 5 will be explored with Dstl SME and users and outputs and ideas fed to the steering board. We would expect these to be facilitated and supported by Contractor experts.

Key division stakeholders and anticipated areas of interest are outlined in Table 1.

Note that Dstl does not anticipate Consultant engagement with external parties e.g. campus partners, local authority planners, other government bodies, etc.

[REDACTED]

Table 1 – Key stakeholders

8. Risk

Dstl understands there is some degree of risk in developing and agreeing a master plan to the desired standard, cost and timescale. There will be a joint Risk Register to be reviewed at the monthly Steering Board.

9. Security Aspects

Dstl is a Government secure organisation to which the Official Secrets Act applies on all sites. [REDACTED]

Data sharing will be required at up to Official Sensitive. [REDACTED].

Annex A – Typical Masterplan Development Process

Discovery stage

- **Establishing where are we now** – estate condition, occupancy, compliance, services, access, connectivity, layout, performance against benchmark organisations and thinking. Current estate strategy and infrastructure projects in train. Current processes and policies, known estate issues and pressures, current governance and planning control arrangements
- **Current constraints and opportunities** – known operational challenges, financial challenges, regulation, compliance and policy matters
- **Understanding the future shape and size of Dstl** - size, headcount, locations, nature and location of S&T work, collaboration with other organisations
- **Developing the agreed high level vision** - what we want the estate to achieve, how it should look, feel and be used, the desired user experience, how we see it being operated and governed, performance targets, etc.

Understanding stage

- **Comparison of future state with the current** – consistency and coherency, opportunities, conflicts, gaps, etc.
- **Establishing key risks and issues** - areas of conflict or tension that drive choices, pressure points that need focus, any areas needing strategic commitment, direction or choice, areas of uncertainty
- **Opportunities for application of best practice** – e.g. for efficiencies, flexibility, adaptability.
- **Agree high level objectives for the estate** – site location(s), size, broad scope of activity, key themes, etc. to guide option development

Option Development and selection stage

- **Developing costed and phased options** covering e.g. location of core activities and buildings, use of spaces, movement and wayfinding, landscape and land use, welfare and support services, infrastructure requirements e.g. roads, utilities etc., across the Dstl locations.
- **Appraising options** for match to agreed vision within feasibility and affordability constraints and strategic priorities and choices
- **Propose overarching policies** covering, e.g. standardisation of design elements (M&E fits, materials, etc.), designing for agility and adaptability, efficiency and utilisation, sustainability, conservation and ecology matters, governance, management and development control arrangements, interactions with planners and neighbours
- **Down-select** to the preferred option(s) and agreed policies.

Developing the detail Master Plan

- **Detail development of the preferred option and supporting policies**, covering e.g. priority issues to be dealt with, phased development of infrastructure and estate over 5, 10 years and beyond, key dependencies and interdependencies, areas of flexibility, affordability, performance targets, risks, issues, assumptions, and constraints.
- **Development of a costed Master Estate Planning schedule** with interdependencies and funding structure
- **Creation of the Master Plan Report** for publication and dissemination
- **Support to any related plans** e.g. local authority master plans

Annex B – Typical Masterplan Report

Context - background on the current estate:

- History, heritage, development of the current estate, current size and scale

Need for a new master plan

- The changing social, technological and defence landscape and demands on the Dstl estate
- What a master plan is, what it does, and why we need one

Our aims and aspirations for the estate, e.g.

- Reflective of a world-class S&T organisation, with the people experience at its core
- Meets all our licence to practice and compliance needs
- Efficient, effective, adaptable, able to meet change

The current challenges of our sites

- Key issues, risks, drivers and constraints
- Condition, capacity, adaptability, etc.
- Comparison with best practice and/or benchmarks

Policy and strategy challenges

- Local planning policies for each site
- Government, MOD and Dstl policies and strategies

Estate principles and standards, e.g.

- How we see the Dstl estate evolving
- Governance - our approach to aligning strategic needs and estate usage
- How we create fit-for-purpose spaces and facilities and integrate the physical and virtual estate
- Establishing identity and character
- Standards - materials, fittings, technical systems, equipment, palette, branding etc.
- Transport, travel and parking strategies
- Approach to land use – zoning, landscape, green and open space
- Circulation, access, wayfinding strategies
- Service infrastructure
- Environmental, sustainability and heritage

Development proposals for the two major sites

- Development of the built environment to meet our delivery needs
- Welfare – food and refreshment, recreation, social hubs, open spaces
- Service infrastructure, sustainable utility and energy use
- Opportunities for improved efficiency, utilisation, flexibility, adaptability
- Movement, orientation and wayfinding strategy
- Car parking, sustainability and transport policies

Development of distributed locations

Financial summary setting out anticipated costs and assumptions upon which the costs are based

Proposed delivery strategy - Phasing, timing, costs and funding requirements, enabling works

Annex C – Information available

The tables below set out key information that may support master plan development together with key projects in train.

C1 Estate information

[REDACTED]

C2 Strategic documents

[REDACTED]

C3 Relevant projects in train

[REDACTED]

A. Methodology

Our enclosed project plan defines the activities to deliver the project requirements. These broadly follow the stages and outputs set out in the ITT and draw on our experience delivering masterplans for the University of Warwick, Manchester and Norwich Science Parks, The Pirbright Institute and the Parliamentary Estate. Our teams are currently working from home with 100% effectiveness using encrypted remote network access. We are continuing client and stakeholder engagement virtually for projects such as the Parliamentary Estate masterplan using MSTeams. Visits to site and face-to-face meetings are supported with appropriate H&S controls. We expect to return to the office during the project and from previous experience there may be benefit in short term colocations on site during high intensity stakeholder consultation

Stage 1: Discovery (Weeks 1-5)

Vision, Strategic and Policy Landscape

We will assimilate information, policies and regulations at the outset. BDP will focus, with assistance from the Dstl SMEs, on those elements that drive master planning and impact our ability to deliver the project vision including security, fire, building/site condition, future requirements across Dstl divisions, compliance, planning, context, sustainability targets etc.

We will, through workshops and interviews with key stakeholders, develop a clear vision document for both sites reflecting the overarching aims of the project and containing key site, policy, legislative & regulatory, planning and delivery drivers, constraints, risks and opportunities. Identified conflict or discrepancies will be discussed with the project steering board to confirm priorities for approval by the project board. The vision document will identify precedents which inform the vision for the site. This document will be our “project bible” against which all future proposals and deliverables will be measured.

Stage 2: Testing & Understanding (Weeks 6-10)

The future shape of work

The stage will test the project vision impact on site development; working methodologies; space use; partner organisation collaborative working space; amenity and support provision; logistics; compliance and security approaches. We will bring our experience of working with forward thinking commercial clients such as AstraZeneca and PwC, as well as bringing the lessons learnt from the challenges of large scale masterplans linked with changing working methodologies, e.g.

Parliamentary Estate and The Pirbright Institute, relating to change management of traditional workstyles, and balancing new approaches to security and logistics with constrained operating budgets.

We propose Stage 1 output consultation to gather feedback and data from site users, operators and stakeholders to inform strategic brief the development. This could include workshops or online questionnaires and (subject to Covid-19 restrictions) be undertaken face-to-face or virtually. We have good experience of relevant techniques as many of our projects have maintained stakeholder engagement during lockdown. We will agree the most appropriate methods for your stakeholders with you.

We will develop diagrams to test the impact of new working approaches on space provision, relationships and amenity, and potential site capacity to inform the next stage of the project. We will use the output from consultation and stakeholder workshops to identify questions, risks, issues & opportunities arising from the

existing site facilities and operations alongside the project vision. These will be captured and tested through benchmarking against other relevant facilities and recommendations developed with the steering board for incorporation into the masterplan strategic briefs for Porton Down and Portsdown West. These strategic briefs will set out the requirements for each site.

Stage 3: Option Development and Appraisal (Weeks 10-17)

Creating a sense of place and meeting wellbeing needs

From our Porton Down site visit and review of the plans there appears to be plenty of opportunity to develop the density of the existing secure zone (citadel) and potentially expand eastwards if required. However the site lacks a cohesive organising plan. Given the scale of activity and number of personnel the site should be treated more like a small town or village centre. The disparate and enclosed nature of activity discourages interaction and creates a disengaged business park character rather than a cohesive and enjoyable campus experience. The site lacks an integral and easily accessible social and semi-urban focus with a set of organising principles which would support the creation of S&T facilities gathered around a green infrastructure linking the elements within an appropriately zoned urban plan incorporating amenity and support services while maintaining strict levels of security. The Porton Down site is an amazing natural asset and much more could be made of the landscape setting, topography and natural amenity.

Portsdown West appears to have clear courtyard approach to the main Grenville Building but outlying buildings do not seem to connect well to this potential focus and the site is dominated by roadways and carparks. Increased density, again, appears possible at PDW but capacity and strategic need will require definition so that standards and policy can be developed which are applicable to both main sites to create a more unified character to Dstl facilities at all your locations.

Strategic Masterplan Options Appraisal

Based on our understanding of the issues and opportunities we will investigate a range of high-level masterplan options. These will be strategic in nature and will explore the broad areas for intervention and the spaces and links between them. Through an iterative process we would refine our proposals to develop up to four strategic options for each site that would test and explore:

- Movement (people, cars, cycles, logistics) across the campus, between activities and to key areas of activity in the wider area;
- Security, Entrances, gateways and access to buildings;
- Licence and regulatory compliance impacts/ approaches;
- Buildings/facilities to be retained, refurbished and demolished;
- New development sites;
- Core Dstl functions and other complementary land uses and activities;
- Provision of social, amenity, recreation and hospitality facilities;
- Brand, identity and character;
- 'Urban' design principles (campus, character, and public realm) and creating a sense of place;
- Green infrastructure and amenity;
- Staff and partner organisation support opportunities and responding to pressures and growth;
- Future flexibility and adaptability;
- Sustainability, health and wellbeing;

- Phasing and value for money.

We will consider both short to medium term requirements and longer term options for currently unplanned growth, along with the spatial and activity implications of new methods of working and information technology. In developing the options BDP will work closely with the Steering Board, SMEs and other stakeholders as appropriate. Alternative approaches will be illustrated with reference to a range of exemplars. We propose that partway through this stage, and prior to option appraisal, internal consultation is undertaken to get a wide range of opinions on emerging options. We will assess the options on how they support developing initiatives such as your study on the balance of home and office based working across the organisation, and division development plans. We will agree appraisal criteria, defined by the Stage 1 Vision Document and Stage 2 Strategic Briefs, against which options will be scored. Previous experience, at the John Innes Centre, has shown it is beneficial to undertake initial scoring within the project team prior to undertaking an appraisal workshop with the Steering Board. This allows simple matters to be reviewed and agreed, thus leaving time for discussion and agreement on any more complex aspects of scoring. The preferred options will be selected through this process.

(Weeks 17-24)

Layout & Logistics, Sustainability & Infrastructure, Operation and Development

During this stage we will undertake an iterative detailed development of the 'preferred option' for each site through regular engagement with the Steering Group. Our work will address specific comments and feedback received during the Options Appraisal meeting at the end of Stage 3 and will provide greater depth and definition to the emerging master plans. It will also establish a set of supporting strategies covering urban design; security; zoning, building & assets; circulation, movement & wayfinding; compliance and logistics & support; public realm; landscape, biodiversity & ecology; cars, cycles, public transport & walking; initial projects and priorities; smart campus; sustainability, energy & carbon; and energy infrastructure.

From an architectural perspective, we will begin to define the key buildings, spaces and environments that will establish the form and character of the sites, and also continue to refine the cost estimate and development viability appraisal for the overall project. An outline phasing and implementation strategy will be developed alongside the preferred options, describing the sequencing of individual phases of development and outlining a high level route map to delivering the sites master plans.

Overarching policies and standards from the above work will be drawn out to assess how they can be applied across Dstl locations and recommendations made for inclusion into a Dstl standards and policy document.

Stage 5: Masterplan Report

(Weeks 25-29)

During this period we will prepare two masterplan reports: the technical masterplan document where all aspects of the masterplan identified in the project plan will be captured and illustrated with detailed annexes which can be omitted for circulation; and the second outward facing document. This latter could take the form of an executive summary document and accompanying presentation. This would be a document for an internal Dstl audience and for external stakeholders (if appropriate). We also propose a planning report which describes the masterplan in the context of

national and local planning policy which could be used for discussion with the local planning authority - as required.

Phase 2

We will attend regular update meetings during phase 2 and define what support you require. The best way to provide what Dstl require will be agreed in advance with timescales and outputs.

B. Supply Chain Management

BDP will provide all services with the exception of cost advice. Architecture and urban planning will be provided by our architects; services infra-structure and energy by our services engineers; Landscape character and design (including roadways) will be developed by our landscape architects; Sustainability will be embedded in the activity of all disciplines supported by our in-house sustainability team; our graphics team will assist in developing consistent application of branding and wayfinding across DSTL sites and our town planners will provide planning policy advice. We believe, at this stage, that specialist traffic and transport consultants are not required to undertake trip modelling etc. We have asked Turner and Townsend (T&T) provide cost advice where this is not available from previous studies through Dstl, and they will be appointed as a sub-consultant by BDP. T&T work with the MoD as part of the CommDP arrangement and our respective teams have worked together at the Net Zero Carbon Research Facilities for JIC and the Pirbright Institute master plan for science, research, containment and operations facilities.

Our architects will act as Lead Consultant managing all in-house and external input to the master plan project. We fully understand our obligations towards clients when employing sub-consultants. We also appreciate the responsibilities we have towards our sub-consultants in regard to payments, dissemination of information, maintaining clarity of brief, and working to a structured programme. Communication and collaboration between parties is a fundamental part of the BDP supply chain management style, driven from our founding multi-disciplinary principles of teamwork and integration. Extending this ethos to our supply chain is a natural progression. We select sub-consultants that share our philosophy of 'place making', and who work in an innovative and creative environment.

Our Quality Management Systems (ISO9001) define procedures and guidance for the selection, assessment, monitoring and checking of sub-consultants and their work. BDP's subletting process ensures that our service to the Client is not compromised and that it complies with the requirements of the contract and of BDP's professional indemnity policy.

The advantage of appointing an interdisciplinary consultant is our ability to manage the workload and draw in expertise from across the practice either via formal deliverables or by drawing on adhoc advice beyond the immediate project team to be incorporated in our outputs. In this way we can deliver to Dstl the best possible master plan with the widest expert input.

Project Plan

Master Plan Report Output	Master Plan Stage	Activity	Site	Month																													
				1				2				3				4				5				6				7					
				Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Master Plan Report Output	1. DISCOVERY	Steering Board Meetings		[Gantt bars]																													
		Project Group Meetings (Virtual)		[Gantt bars]																													
Context	1. DISCOVERY	Stage 1 Timeline		[Gantt bars]																													
		Establish Current Position	Porton Down, Porton West, Othello	[Gantt bars]																													
		Identify Constraints and Opportunities	Porton Down, Porton West, Othello	[Gantt bars]																													
		Establish Future DSTL Shape and Size	Porton Down, Porton West, Othello	[Gantt bars]																													
Need		Develop Agreed High Level Vision		[Gantt bars]																													
Aims & Aspirations		Sign off Stage 1		[Gantt bars]																													
Current Site, Policy & Strategy Challenges	2. TESTING & UNDERSTANDING	Stage 2 Timeline		[Gantt bars]																													
		Test Output of Stage 1 with Current State	Porton Down, Porton West, Othello	[Gantt bars]																													
		Consultation Window 1	Porton Down, Porton West, Othello	[Gantt bars]																													
		Identify Questions, Risks, Issues & Opportunities Arising	Porton Down, Porton West, Othello	[Gantt bars]																													
Strategic Brief		Best Practice Benchmarking		[Gantt bars]																													
		Define and Agree Strategic Brief		[Gantt bars]																													
		Sign off Stage 2		[Gantt bars]																													
Estate Principles and Standards for Two Sites and Distributed Locations	3. OPTED DEVELOPMENT & APPRAISAL	Stage 3 Timeline		[Gantt bars]																													
		Prepare Strategic Options	Porton Down, Porton West, Othello	[Gantt bars]																													
		Test Options for Fit with Strategic Brief	Porton Down, Porton West, Othello	[Gantt bars]																													
		Consultation Window 2	Porton Down, Porton West, Othello	[Gantt bars]																													
		Refine Options Carried Forward	Porton Down, Porton West, Othello	[Gantt bars]																													
		Develop & Agree Policies & Standards	Porton Down, Porton West, Othello	[Gantt bars]																													
Development Proposals, Assumptions and Delivery Strategy for Two Sites	4. MASTER PLAN DEVELOPMENT	Agree Appraisal Criteria	Porton Down, Porton West, Othello	[Gantt bars]																													
		Cost & Risk Review	Porton Down, Porton West, Othello	[Gantt bars]																													
		Options Appraisal & Select Preferred Option	Porton Down, Porton West, Othello	[Gantt bars]																													
		Sign off Stage 3		[Gantt bars]																													
		Stage 4 Timeline		[Gantt bars]																													
		Urban Design Strategy	Porton Down, Porton West, Othello	[Gantt bars]																													
Security Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Zoning, Building & Assets Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Circulation, Movement & Wayfinding Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Logistics & Support Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Public Realm Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Landscape, Biodiversity & Ecology Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Cars, Cycles, Bus & Walking Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Initial Projects and Priorities	Porton Down, Porton West, Othello	[Gantt bars]																															
Phasing Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Smart Campus Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Sustainability, Energy & Carbon Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Energy Infrastructure Strategy	Porton Down, Porton West, Othello	[Gantt bars]																															
Consultation Window 3	Porton Down, Porton West, Othello	[Gantt bars]																															
Cost & Risk Review	Porton Down, Porton West, Othello	[Gantt bars]																															
Interim Masterplan Review	Porton Down, Porton West, Othello	[Gantt bars]																															
Finalise Masterplan	Porton Down, Porton West, Othello	[Gantt bars]																															
Final Cost Validation	Porton Down, Porton West, Othello	[Gantt bars]																															
		Sign off Stage 4		[Gantt bars]																													
Delivery of Masterplan Report	5. MASTER PLAN REPORT	Stage 5 Timeline		[Gantt bars]																													
		Masterplan Report for DSTL	Porton Down, Porton West, Othello	[Gantt bars]																													
		Masterplan Report - Outward Facing	Porton Down, Porton West, Othello	[Gantt bars]																													
		Design Standards and Policy Report	Porton Down, Porton West, Othello	[Gantt bars]																													
		Planning Policy Report		[Gantt bars]																													
		Sign off Stage 5		[Gantt bars]																													

Schedule 4 - Assumptions for Pricing

The “Optional Resource” has been identified as it is difficult to know what might be required. This is developed below:

- Graphic Design: We have allowed for our graphic designers to review the existing Dstl Brand Standards document to develop a strategy for physical implementation across Dstl sites. This level of input may or may not be required.
- Town Planning: We have allowed for advice to the team on local / national planning matters and the development of a planning strategy to support the master plans. This output may not be required.
- Cost Consultancy: We have allowed for resource to provide cost advice on infrastructure, landscape, and building construction costs derived by the cost consultant sourcing appropriate benchmark data.
- It is possible that Dstl hold recent data on costs for these elements which can be utilised and therefore this allowance may be overstated.
- Our fees do not include for special presentation materials such as CGIs, physical models or verified views. If these services are required, they can be procured by BDP for an additional fee.
- Images, models and output from our 3d site models during our development process are included.
- Hourly rates used to develop our fee are within our CCS Rates and are exclusive of VAT.
- Our Project Plan has been developed based on delivery of high quality, well considered master plans and site strategies across the Dstl estate and therefore requires significant resource to support. If more is known about future project requirements to inform the master plans then less time overall may be required which would, potentially, reduce the fees for the project.
- The fee has been developed based on the programme developed by BDP in response to the project requirements. Changes to the programme may require us to re-visit our fee to reflect reductions or extensions.
- We have not included for a specialist security consultant as we assume this function will be provided from within Dstl.
- We have not allowed for the procurement or provision of surveys within our fee. It is assumed Dstl have up to date survey information for their sites.
- QRA risk analyses are not included. We can provide this service for an additional fee
- We have assumed that meeting attendance will typically be by the architects with attendance by other professions only as required.
- Current Government restrictions prohibit nonessential travel and have imposed social distancing disciplines on all of us. Our offer therefore assumes that most regular meetings will be undertaken remotely via audio/video conferencing networks until such time as restrictions are lifted. We assume virtual guided site visits can be organised by the Client if required and all information exchange/communication is digital. It will undoubtedly be beneficial for our team to visit the sites and we will undertake an early physical site visit to each site assuming this in the spirit of the restrictions and H&S protocols and risk assessments for each site can be supplied (as was arranged for the pre-tender Porton Down visit).

Phase 1 Summary Plan with Lump Sum Fee by Stage [REDACTED]

Phase 1 Summary Plan with Resource [REDACTED]

Rate Card for Phase 2 [REDACTED]

Cyber

1. Definitions

1.1. In this Condition the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Associated Company” means:

(a) any associated company of the Consultant from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and

(b) any parent undertaking or subsidiary undertaking of the Consultant from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

“Consultant Deliverables” shall have the meaning set out in SC2 Schedule 1 (Definitions of Contract);

“Cyber Risk Level” means the level of Cyber Risk relating to this Contract or any Subcontract assessed in accordance with the Cyber Security Model;

“Cyber Security Implementation Plan” means the plan referred to in Clause 3 of this Condition including but not limited to any risk-balance case and mitigation measures required by the Authority;

“Cyber Security Incident” means an event, act or omission which gives rise or may give rise to:

- (a) unauthorized access to an information system or electronic communications network;
- (b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;
- (c) destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- (d) removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- (e) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

“Cyber Security Instructions” means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Consultant;

“Cyber Security Model” and **“CSM”** mean the process by which the Authority ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;

“CSM Risk Assessment Process” means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Contract and any Sub-contract;

“CSM Supplier Assurance Questionnaire” means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Consultant to demonstrate compliance with this Condition;

“Data” means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.

“DEFSTAN 05-138” means the Defence Standard 05-138 as amended or replaced from time to time;

“Electronic Information” means all information generated, processed, transferred or otherwise dealt with under or in connection with the Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network;

“Good Industry Practice” means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

“ISN” means Industry Security Notices issued by the Authority to the Consultant whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;

“JSyCC WARP” means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

“MOD Identifiable Information” means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure.

“NSA/DSA” means, as appropriate, the National or Designated Security Authority of the Consultant that is responsible for the oversight of the security requirements to be applied by the Consultant and for ensuring compliance with applicable national security regulations;

“Sites” means any premises from which Consultant Deliverables are provided in connection with this Contract or from which the Consultant or any relevant Sub-Contractor manages, organises or otherwise directs the provision or the use of the Consultant Deliverables and / or any sites from which the Consultant or any relevant Sub-contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Contract;

“Sub-contract” means any sub-contract at any level of the supply chain whether awarded directly by the Consultant or indirectly by any lower tier Sub-contractor or Associated Company, which is entered into as a consequence of or in connection with this Contract;

“Sub-contractor” means a sub-contractor of the Consultant or any Associated Company whether a direct Sub-contractor or at any lower level of the supply chain who provides any Deliverables in connection with this Contract;

“Supplier Cyber Protection Service” means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

2. Authority Obligations

2.1. The Authority shall:

2.1.1. determine the Cyber Risk Level appropriate to this Contract and, where the Consultant has not already been notified of the Cyber Risk level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the Consultant as soon as is reasonably practicable; and has not already been notified of the Cyber Risk level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the Consultant as soon as is reasonably practicable; and

2.1.2. notify the Consultant as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

3. Consultant Obligations

3.1. The Consultant shall, and shall procure that its Sub-contractors shall:

3.1.1. comply with DEFSTAN 05-138;

3.1.2. complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Subcontractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Consultant's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;

3.1.3. carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;

3.1.4. having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this condition in accordance with Good Industry Practice *provided always that* where there is a conflict between the Consultant's obligations under 3.1.1 above and this 3.1.4 the Consultant shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;

3.1.5. comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;

3.1.6. notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Consultants NSA/DSA, and in the case of a Sub-contractor also notify the Consultant, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;

3.1.7. in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Consultants NSA/DSA in the circumstances and taking into account the Cyber Risk Level; and

3.1.8. consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Consultant and / or Sub-contractor as appropriate; and

3.1.9. include provisions equivalent to 7.1 of this Condition in all Sub-contracts imposing provisions equivalent to this Condition 3 (the "equivalent provisions") and, where a Subcontractor breaches terms implementing this Condition in a Sub-contract, the Consultant shall, and shall procure that its Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract:

3.1.9.1. notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority's views into consideration; and

3.1.9.2. have regard to the equivalent provisions.

PROVIDED ALWAYS THAT where the Consultant has notified the Authority that it or one or more of its Subcontractors cannot comply with 3.1.1 to 3.1.9 above the Authority and Consultant will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Consultant, the Consultant shall, and shall procure that its Sub-contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 3.1.1 to 3.1.9 above shall apply in full. In the event that a

Cyber Security Implementation Plan cannot be agreed the provisions of SC2 Condition of Contract 40 (Dispute Resolution) or any agreed alternative dispute resolution procedure shall apply.

4. Management of Sub-Contractors

4.1. The Authority agrees that the Consultant shall be entitled to rely upon the self-certification by a Sub-contractor of its compliance with its obligations pursuant to Condition 3.1. In the event that a Sub-contractor is found to be in breach of its obligations in Condition 3.1, and where the Contract has relied upon the Sub-contractor's self-certification, the Consultant shall not be held to be in breach of this Condition.

4.2. Where the Consultant becomes aware that a Sub-contractor is not complying with its obligations, the Consultant shall notify the Authority and provide full details of the Subcontractor's non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-contract having regard to Condition 3.1.9.

4.3. Having regard to the Authority's views, the Consultant shall take all reasonable measures to address any non-compliance of a Sub-contractor in accordance with the reasonable timescales required by the Authority. Where the Consultant fails to do so, this shall amount to a breach of this Condition and the provisions of 7.2 or 7.3 as appropriate shall apply.

4.4. The Consultant shall, and shall procure that its Sub-contractors shall, include provisions equivalent to this Condition 4 in all Sub-contracts which flow down the obligations set out in Condition 3.1 of this Contract.

5. Records

5.1. The Consultant shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until 6 years after termination or expiry of this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

5.1.1. details of all MOD Identifiable Information relating to the Consultant Deliverables provided under this Contract; and

5.1.2. copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Condition, including but not limited to any information used to inform the CSM Risk Assessment process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Consultant and / or Sub-contractor.

5.2. The Consultant shall, and shall ensure that any Sub-contractor shall on request provide the Authority, the Authority's representatives and / or the Consultants NSA/DSA such access to those records as may be required in connection with this Contract.

6. Audit

6.1. Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Consultant agrees, and shall procure that its Subcontractors agree, that the Authority and its representatives, in coordination with the Consultants NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and / or the Consultants NSA/DSA may, not more than twice in any calendar year and for a period of 6 years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:

6.1.1. to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;

6.1.2. to review the Consultant's and / or any Sub-contractor's compliance with its obligations under this Condition; and

6.1.3. to review any records created during the provision of the Consultant Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Consultant Deliverables for the purposes of 6.1.1 and 6.1.2 above.

6.2. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Consultant and / or Sub-contractor or delay the provision of the Consultant Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

6.3. The Consultant shall, and shall ensure that any Sub-contractor shall on demand provide the Authority and any relevant regulatory body, including the Consultant's NSA/DSA, (and / or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:

6.3.1. all information requested by the Authority within the permitted scope of the audit;

6.3.2. reasonable access to any Sites controlled by the Consultant or any Associated Company and any Sub-contractor and to any equipment used (whether exclusively or nonexclusively) in the performance of the Contract and, where such Sites and / or equipment are outwith the control of the Consultant, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

6.3.3. access to any relevant staff.

6.4. The Authority shall endeavour to (but is not obliged to) provide at least 15 calendar days' notice of its intention to conduct an audit.

6.5. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition, unless the audit identifies a material breach of the terms of this Condition by the Consultant and / or Sub-contractor in which case the Consultant shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

7. Breach of Obligations

7.1. In exercising its rights or remedies under this Condition, the Authority shall:

7.1.1. act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Contract; and

7.1.2 give all due consideration, where appropriate, to action other than termination of the Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.

7.2. Where the Cyber Risk Level of this Contract is assessed to be a **moderate or high**, and the Consultant breaches the terms of this Condition, the Authority shall be entitled:

7.2.1 to terminate the Contract (whether in whole or in part) and to claim damages in accordance with SC2 Condition of Contract 43 (Material Breach) as though such breach is a material breach; and

7.2.2 where the Contract has not been terminated, to recover from the Consultant any other loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract.

7.3. Where the Cyber Risk Level of this Contract is assessed to be **very low or low**, and the Consultant breaches the terms of this Condition, the Authority shall be entitled:

7.3.1. to recover from the Consultant the amount of any loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract; and

7.3.2. where the Consultant does not comply with any reasonable instructions issued by the Authority or the Consultants NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with SC2 Condition of Contract 43 (Material Breach) as though such breach is a material breach.

7.4 Where the Consultant commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Condition the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with SC2 Condition of Contract 43 (Material Breach) as though such breach is a material breach.

8. General

8.1. On termination or expiry of this Contract the provisions of this Condition excepting 3.1.2 and 3.1.3 above shall continue in force so long as the Consultant and / or Sub-contractor holds any MOD Identifiable Information relating to this Contract.

8.2. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Condition that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

8.3.

8.3.1. The Consultant agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and / or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Consultant may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level *provided always that* the Consultant shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and *further provided that* such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.

8.3.2. Subject to 8.3.1 above, where the Consultant seeks such adjustment or extension, the Authority will proceed in accordance with SC2 Schedule 4 (Contract Change Control Procedure) or any agreed alternative change control procedure to determine the request for adjustment or extension. The Consultant must deliver a Consultant Change Proposal to the Authority within 8 weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the Consultant Change Proposal is rejected. In the event that the Consultant does not agree with the Authority's determination, then the provisions of SC2 Condition of Contract 40 (Dispute Resolution) or any agreed alternative dispute resolution procedure shall apply.

8.4. The Consultant shall not recover any costs and / or other losses under or in connection with this Condition where such costs and / or other losses are recoverable or have been recovered by the Consultant elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Consultant is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and / or losses in other contracts between the Consultant and the Authority or with other bodies.