

KBS – FMSP PROFESSIONAL SERVICES FRAMEWORK

DATED 20[]

(1) KBS MARITIME LIMITED

(2) [SUB-CONTRACTOR]

FRAMEWORK SUB-CONTRACT FOR PROFESSIONAL SERVICES IN RESPECT OF THE FUTURE MARITIME SUPPORT PROGRAMME (FMSP) IN RELATION TO [INSERT BRIEF DESCRIPTION OF THE PROJECT / MAINTENANCE IT RELATES TO] AT HM NAVAL BASE NAVAL BASE PORTSMOUTH

Version: 3.1 (14 November2024)

FOR KBS USE ONLY – DELETE before issuing to Supplier

Record of changes

Date		1 st October 2024
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Sch. 2	Changed the wording ‘Security Policy’ in Mandatory policies to ‘Security Compliance for Sub-Contractors’	14 Nov. 2024
Sch. 9	Remove the first box for ‘Order Price’ (duplicated)	14 Nov. 2024
Cls. 3.1	Removed MDFW Effective Dates and Duration	14 Nov. 2024
ToC	Rectified Styles & Numbering	15 Nov. 2024
27	Rectified clause references sub-clauses 27.1, 27.5 and 27.6	28 Jan. 2025

SUB-CONTRACT FRAMEWORK FOR PROFESSIONAL SERVICES

Contract No: [contract number]

Date: [insert date]

This Sub-Contract Framework for Services (the 'Sub-Contract') is entered into between

KBS MARITIME LIMITED a company incorporated in and in accordance with the laws of England and Wales having as its registered number 13289372 and its registered office at Victory Building (Pp72), Rm. 233 The Parade, HM Naval Base, Portsmouth, England, PO1 3LS (the "**Client**")

And

[**SUB-CONTRACTOR**] a company incorporated in and in accordance with the laws of England and Wales having as its registered number [insert] and its registered office at [insert] (the "**Sub-Contractor**"), together "**the Parties**"

WHEREAS

- A. The Client has entered into a contract with the Authority to deliver hard facilities management and alongside services for HM Naval Base Portsmouth, in accordance with the terms and conditions set out in the Prime Contract
 - B. The Client may wish the Sub-Contractor to provide certain Services from time to time
- and
- C. The Sub-Contractor is willing to carry out the Services on the terms set out in this Sub-Contract.

AUTHORISATIONS

Each party warrants that:

- a) it has full capacity and authority to enter into and to perform this Agreement;
- b) this Agreement is executed by a duly authorised representative of that party;
- c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and
- d) once duly executed, this Agreement will constitute legal, valid and binding obligations.

This Sub-Contract has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by)
KBS MARITIME LIMITED)
acting by its attorney in the presence of) Attorney

Name
Signature of Witness
Address

Executed as a deed by
[NAME OF SUB-CONTRACTOR] LIMITED Director
acting by two directors or by a
director and its secretary
Director/Secretary

Name
Signature of Witness
Address

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1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Sub-Contract, capitalised words and expressions shall have the meaning given to them in the Definitions.
- 1.2 Any reference to a statute, statutory instrument or other subordinate legislation is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other part of the United Kingdom.
- 1.3 Any reference to this Sub-Contract or to any other document is a reference to this Sub-Contract or to that other document as amended, assigned, modified, novated, replaced, supplemented or varied (in each case, other than in breach of the provisions of this Sub-Contract) at any time.
- 1.4 No approval, comment, consent, decision, enquiry, inspection, instruction, payment or sanction given, made or implied by or on behalf of the Client at any time shall operate to exclude or limit the Sub-Contractor's duties, obligations or liabilities under or in connection with this Sub-Contract or constitute evidence that any matter to which the same relates is in accordance with this Sub-Contract.
- 1.5 In this Sub-Contract the following words and expressions shall have the meaning given to them, except as expressly provided otherwise:

DEFINITIONS

“Actual Cost”	means in relation to given Services, a cost that complies with any applicable rules and requirements specified by the Client having regard to the requirements of the Prime Contract.
“Agreed Pricing Rates”	Means the approved rates submitted by the Sub-Contractor to the Client, set out in Schedule 10 that shall be used for pricing the Services, which may be revised no more frequently than every twelve (12) calendar months
“Authority”	means The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.
“Authority Consents”	means all Required Consents that as a matter of Law or policy only the Authority is eligible to obtain.
“Authority Confidential Information”	means any information received by the Sub-Contractor from or relating to the Authority in connection with this Sub-Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, together with all information derived from any of the above, and any other information conveyed by the Authority which is clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.
“Authority Contract Manager”	is the person or persons appointed to that role under the Prime Contract as notified to the Sub-Contractor by the Client from time to time.
“Authority Identifiable Information”	means all Electronic Information which is attributed to or could identify an existing or proposed Authority capability, defence activities or personnel and which the Authority requires to be protected against loss, damage, destruction, misuse, corruption, alteration and unauthorised disclosure.
“Authority Representative”	means the relevant representative of the Authority as notified to the Client by the Authority Contract Manager (and subsequently notified to the Sub-Contractor by the Client), from time to time.
“Background IP”	means Intellectual Property (other than Foreground IP):

- (a) owned by the Sub-Contractor before the Effective Date, or created by the Sub-Contractor other than under the terms of, or in connection with, the performance of, this Sub-Contract;
- (b) owned by a third party and licensed to the Sub-Contractor or which is, or will be, used to fulfil the Sub-Contractor's obligations under this Sub-Contract.

“CAAS” means the Authority's Cost Assurance & Analysis Service.

“CDM Regulations” means the Construction (Design and Management) Regulations 2015 issued by the UK's Health and Safety Executive.

“Change” means

- (i) change to the Specification; or
- (ii) an alteration that causes a change to:-
 - (A) the fit, form, function or characteristics of the Services;
 - (B) the delivery dates;
 - (C) the cost;
 - (D) the period required for the production or completion; or
 - (E) other work caused by the alteration

“Change Control Procedure” means the procedure for agreeing Change as set out in Clause 8 – Early Warning and Change Control Procedure

“Change Notice” as provided in Schedule 4 – Change Notice

“Change in Law” means the occurrence after the Effective Date of one of the following:

- (a) any Law comes into effect or is repealed (without re-enactment or consolidation) or is varied or amended; or
- (b) the Sub-Contractor becomes obliged pursuant to Clause 5 (*Performing the Services*) to comply with any amendment, supplement or replacement of any industry standards or regulations; or
- (c) any change to the Data Protection Legislation; or
- (d) any change to rules, regulations and requirements at Government Establishments (as referred to in Paragraph 2.1 (*Observance of Applicable Law and Regulations*) of Schedule 1 (*Mandatory Flowdown provisions*)).

“Change Proposal” means when either party proposes a Change.

“Client Consents” Means all Required Consents that, as a matter of Law or policy only the Client is eligible to obtain.

“Client Confidential Information” means any information received by the Sub-Contractor from the Client in connection with this Sub-Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Client, together with all information derived from any of the above, and any other information conveyed by the

	Client which is clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.
"Client Contract Manager"	is the person or persons appointed pursuant to Clause 29 (<i>Contract Managers</i>).
"Client Personnel"	means the employees, staff, directors or officers (or any person who occupies the position of a director or officer, by whatever title given) of the Client.
"Client Representative"	means the relevant representative of the Client as notified to the Sub-Contractor by the Client Contract Manager, from time to time.
"Commencement Date"	means the commencement date stated in the Order.
"Commercially Sensitive Information"	means information of a commercially sensitive nature relating to the Sub-Contractor or its business which the Sub-Contractor has indicated for the purposes of Paragraph 8 (<i>Confidentiality and Freedom of Information</i>) and Paragraph 9 (<i>Transparency</i>) of Schedule 1 (<i>Mandatory Flowdown Provisions</i>) to the Client that, if disclosed by the Client, would cause the Sub-Contractor significant commercial disadvantage or material financial loss.
"Competent Authority"	means: (a) any court with the relevant jurisdiction and any local, national or supra-national government or agency, any regulator, inspectorate, minister of the Crown, minister, ministry, official or public or statutory person of His Majesty's Government of the United Kingdom or devolved government or of the European Union; (b) any private body to the extent it carries out one (1) or more public functions; or (c) any other body which has jurisdiction in respect of the Services or this Sub-Contract, including the Authority.
"Comptroller and Auditor General"	means the government official responsible for supervising the quality of public accounting and financial reporting.
"Confidential Information"	means the Authority Confidential Information, the Client Confidential Information and/or the Sub-Contractor Confidential Information.
"Controlled Materials"	Supplies that are regulated by the Export Control Order 2008, the US Department of State's International Traffic in Arms Regulations, the US Department of Commerce's Export Administration Regulations and/or all applicable laws and regulations of any jurisdiction relating to import or export controls at any time during the performance of the Sub-Contract
"CSM Supplier Assurance Questionnaire"	means the sub-Contractor assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Sub-Contractor to demonstrate compliance with Paragraph 6 (<i>Cyber</i>) of Schedule 1 (<i>Mandatory Flowdown Provisions</i>).
"Cyber 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 Sub-Contract and any Sub-Sub-Contract.
"Cyber Risk Level"	means the level of Cyber Risk relating to this Sub-Contract or any Sub-Sub-Contract assessed in accordance with the Cyber Security Model.
"Cyber Security Implementation Plan"	means the cyber security implementation plan agreed between the Client and the Sub-Contractor under the Sub-Contract and which may be varied from time to time.

“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 Authority Identifiable Information residing in an information system or electronic communications network; (d) removal or limiting the possibility to use Authority Identifiable Information residing in an information system or electronic communications network; or (e) the appropriation, publication, dissemination or any other use of non-public Authority Identifiable Information by persons unauthorised to do so.
“Cyber Security Instructions”	means DEF STAN 05-138, together with any relevant ISN and specific security instructions relating to this Sub-Contract issued by the Authority or the Client to the Sub-Contractor.
“Cyber Security Model and CSM”	means the process by which the Authority ensures that Authority Identifiable Information is adequately protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEF STAN 05-138 and the CSM Supplier Assurance Questionnaire.
“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.
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Sub-Contractor under this Sub-Contract, and/or loss and/or alteration and/or destruction of Personal Data, including any personal data breach (as defined in the DPA 2018).
“Data Protection Act” or “DPA 2018”	means the Data Protection Act 2018.
“Data Protection Impact Assessment”	means an assessment by the Client of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	means: (a) the GDPR, LED and any applicable national implementing Applicable Laws; (b) the DPA 2018; (c) the European Privacy and Electronic Communications Directive (Directive 2002/58/EC) or, on and from the date on which it becomes effective, the proposed Regulation on Privacy and Electronic Communications; (d) all Applicable Laws about the processing of Personal Data and privacy; and (e) any guidance, directions, decisions, determinations, codes of practise, orders, notices or demands issued by any Supervisory Authority, each as applicable and as amended, supplemented, substituted or replaced from time to time.

“Data Protection Officer”	shall have the same meaning as in the DPA 2018.
“Data Subject”	shall have the same meaning as set out in the DPA 2018.
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“Day”	means any weekday excluding: (a) Saturdays, Sundays and public and statutory holidays in England, and/or (b) in each case, commencing at midnight and ending at the end of 23.00 hours and fifty-nine (59) minutes.
“Defence Authority”	means the Defence Safety Authority and any authority with responsibility for safety matters within the Defence Safety Authority including the Defence Ordnance Munition and Explosives Safety Regulator, Defence Maritime Regulator and Defence Nuclear Safety Regulator
“Dispute Resolution Procedure”	means the procedure for the resolution of disputes set out in Clause 34 (<i>Dispute Resolution Procedure</i>).
“Early Warning Event”	means any matter which could: a) increase the total of the Price payable by the Client under the relevant Order issued under this Sub-Contract b) delay date for completion; c) delay the Supplier in meeting a Milestone or Key Milestone Date; or d) impair the performance of the Services in use, but which does not constitute a Force Majeure Event
“Electronic Information”	means all information generated, processed, transferred or otherwise dealt with under or in connection with the Sub-Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network.
“Environment”	means all or any of the media of air, water, land and all or any living organisms (including man) or systems supported by any such media.
“Environmental Information Regulations”	means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.
“Environmental Law”	means all applicable Laws relating to Environmental Matters (but excluding all such applicable Laws that relate to the health and safety of workers in the workplace) which may from time to time be in force.
“Environmental Matter”	means all or any matters relating to: (a) compliance with Environmental Law (b) pollution or contamination of the Environment;

	(c) the presence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of Hazardous Substances or waste; (d) the storage or use of Hazardous Substances and waste, and any exposure of any person to Hazardous Substances or waste; (e) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the Environment; (f) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the Environment or any part of it; (g) climate change; and/or (h) energy efficiency.
“Environmental Permit”	means any Required Consent issued or required under Environmental Law.
“FOI Information”	has the meaning given to "Information" under section 84 of the Freedom of Information Act 2000.
“Force Majeure Event”	The following list of events or circumstances: (a) nuclear, chemical or biological contamination caused other than by the Client or the Sub-Contractor or any persons over whom the Client or the Sub-Contractor exercise control; (b) war, civil war, armed conflict or terrorism in each case arising within or affecting the United Kingdom to the extent that this is not an event constituting Measures in a Crisis; (c) pressure waves caused by devices travelling at supersonic speeds.
“Foreground IP”	means Intellectual Property created under the terms of, or in connection with the performance of, this Sub-Contract, together with any developments made to Background IP under the terms of or in performance of this Sub-Contract.
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679).
“GFA”	means the services, resources, facilities, information, equipment, assets and other supplies that the Client and/or the Authority supplies to the Sub-Contractor for the purpose of this Sub-Contract.
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that to which this Sub-Contract relates under the same or similar circumstances to this Sub-Contract.
“Government Establishment”	means: (a) any premises owned or operated by HM Government; (b) any of His Majesty's ships or vessels and service stations operated by HM Government; and

(c) any operational unit operated by HM Government.

"Hazardous Substances"	means any natural or artificial substance (whether in solid or liquid form or in the form of a gas, vapour or ionising radiation and whether alone or in combination or in reaction with any other substance) capable of causing harm to man or any other living organism supported by the Environment or damaging the Environment or public health or welfare, including any controlled special hazardous toxic or dangerous waste or radioactive material.
"Health and Safety Authority"	means any Competent Authority which is responsible for enforcing Health and Safety Law including without limitation the Office for Nuclear Regulation, the Health and Safety Executive, the Environment Agency and local authorities.
"Health and Safety Law"	means all Applicable Law relating to the safety of employees and non-employees who may be affected by a Client's undertaking including but not limited to the Health and Safety at Work Act 1974, all secondary legislation passed under that Act and the Nuclear Installations Act 1965 which may from time to time be in force.
"Historic Contamination"	means the presence of Hazardous Substances at, on, in or under the Site or the Naval Base on or before the Effective Date
"Intellectual Property Rights"	means patents, rights to inventions, trademarks, service marks, domain names, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, rights in information (including know-how and trade secrets), trade or business names and other similar rights or obligations, whether registrable or not, in any country (including the United Kingdom) for the full term of the rights together with any extensions.
"Irrecoverable Losses"	means, even where the Party has been advised of it, any indirect, special or consequential loss, loss of profits, loss of use, loss of production, loss of business, and loss of contract.
"JOSCAR"	means the accreditation and compliance system referred to in Clause 2.6.
"Key Milestone"	means a Milestone which is critical to the Programme, failure of which triggers a deduction amount in accordance with Schedule 7 (<i>Key Performance Indicators</i>)
"Key Performance Indicators"	means the key performance indicators in respect of the Services to be provided, as set out in Schedule 7 and the Order (<i>Key Performance Indicators</i>).
"Law"	means: (a) any applicable law, enactment, statute, proclamation, by-law, directive, decision, notice, court decree or judgment, regulation, authorisation, rule, order, rule of court or delegated or subordinate legislation including directions, requirements or guidance issued pursuant to any legislation (provided such directions, requirements or guidance are derived from a valid legal authority, including any nuclear regulator) and (b) any Government, NBC or other Authority documents or publications having the force of law in each case in force in the United Kingdom at any time or from time to time.
"LED"	means the Law Enforcement Directive (Directive (Eu) 2016/680).
"Losses"	means all losses, liabilities, damages, costs and expenses (including legal fees on solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

"Mandatory Change"	means circumstances where this Sub-Contract or the Prime Contract expressly states that a matter shall be dealt with as a Mandatory Change as a result of changing law or legislation.
"Mandatory Flowdown Provisions"	means the provisions set out in Schedule 1 (<i>Mandatory Flowdown Provisions</i>).
"Mandatory Policies"	means the Client's business policies and codes listed in Schedule 2 (<i>Mandatory Policies</i>), as amended by notification to the Sub-Contractor from time to time.
"Measures in a Crisis"	means one of the following events: (a) a material threat to the national security and defence, or a material adverse effect on the national interests, of the United Kingdom, or the occurrence of a state of war, crisis, state of tension or other emergency (whether or not involving hostilities); or (b) a request to the Client by the Authority, a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; or (c) a request by NATO, the EU or the United Nations for support or assistance in relation to international obligations; or (d) the existence of an emergency or the occurrence of an unforeseen event affecting the Portsmouth Naval Base or its operations or the performance by the parties or the provision of the Services by the Sub-Contractor, whether directly or indirectly, and which causes or has the potential to cause an immediate and imminent threat to the long term integrity of any part of the Portsmouth Naval Base or to land adjacent to, or likely to be affected by events on, any part of the Portsmouth Naval Base or the viability of the relevant Portsmouth Naval Base, the performance of this Sub-Contract or the provision of Services by the Sub-Contractor, and in view of the above, it is necessary, appropriate or desirable for the Authority to take all or any of the measures described in the Prime Contract (as notified to the Sub-Contractor by the Client).
"Milestone"	means a specific point within the Programme used to measure the progress of the Services set out in the Milestone Summary Table
"Milestone Amount"	means the amount of that is payable upon completion of a Milestone or Key Milestone, such amount being the amount recorded for that Milestone or Key Milestone in the Milestone Summary Table for the Services concerned.
"Milestone Summary Table"	means the table included in the Order which specifies the Milestones and Key Milestones and Milestone Amounts in the format set out in Part 3 to Schedule 9
"Naval Base" or "Portsmouth Naval Base"	means His Majesty's Naval Base Portsmouth being that area of Ministry of Defence land on both east and western shores of Portsmouth Harbour under the command of the Naval Base Commander for the provision of operational, material and personnel support to the Royal Navy, including the buildings from time to time erected thereon, the Service Media and the basins, berths, quays and docks therein.

“Naval Base Commander” or “NBC”	means the person holding from time to time such office in relation to the Naval Base or the officer appointed by the Authority to perform the duties of such office or any person authorised by such person.
“Naval Base Health & Safety and Security Requirements”	means the policies and procedures related to health and safety on the Naval Base that may apply from time to time.
“Nominating Body”	shall have the meaning set out in the Order.
“Notice”	has the meaning given in Clause 13.2
“NSA/DSA”	NSA/DSA means, as appropriate, the National or Designated Security Authority of the Sub-Contractor that is responsible for the oversight of the security requirements to be applied by the Sub-Contractor and for ensuring compliance with applicable national security regulations.
“Numbered Documents”	means the documents referred to in and annexed to the Order.
“Officer in Charge”	means, as appropriate, officers commanding service stations, ships' masters or senior officers, and heads of Government Establishments.
"Order"	means a valid Order in the form set out in Schedule 9 of this Sub-Contract and purchase order placed by the Client on the Sub-Contractor.
“Order Price”	means the total amount payable to the Sub-Contractor by the Client for carrying out and completion of the Services (excluding VAT) as stated in the Order.
“Pay Less Notice”	Means a written notice to the Sub-Contractor from the Client in accordance with Schedule 7 (<i>Key Performance Indicators</i>) which shall state its intention to pay less than the Milestone Amount
“Performance Adjustment”	Means a Milestone Retention or a Milestone Deduction amount in accordance with Schedule 7 (<i>Key Performance Indicators</i>)
“Personal Data”	shall have the same meaning as set out in the DPA 2018.
“Prime Contract”	is the Future Maritime Support Programme contract between the Client and the Authority dated 01 October 2021 relating to the provision of services by the Client in relation to Hard Facilities Management and Alongside Services at Portsmouth Naval Base of which this Sub-Contract is a sub-contract.
“Processing”	shall have the same meaning as in the DPA 2018 (and "Process" and "Processed" shall be construed accordingly).
“Processor”	shall have the same meaning as in the DPA 2018.
“Programme”	means the programme for the delivery of the Services as set out in the Numbered Documents and the Order.

"Rates"	shall mean any agreed rates for the calculation of Order Prices and/or variations
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence parties to and/or the matters dealt with in this Sub-Contract or any other affairs of the Authority and Regulatory Body shall be construed accordingly.
"Related Dispute"	means any dispute related to equivalent or analogous matters between the Sub-Contractor and a related contractor or under or in connection with the Prime Contract.
"Related Dispute Adjudicator"	means an adjudicator appointed to determine a Related Dispute.
"Remediation"	means preventing, limiting, removing, remedying, cleaning up, abating, containing or ameliorating the presence or effect of Hazardous Substances at, on, in under or introduced to or originated from the Site or the Naval Base (as applicable) and Remediate and Remediating shall be interpreted accordingly.
"Reporting Period"	means a calendar month, unless otherwise agreed or requested by the Client.
"Required Consents"	means any consent, licence, permission, authorisation, permit or approval of, or relaxation or derogation issued by or required to be issued by (as the context may require), any Competent Authority in connection with or which is necessary from time to time for the carrying out of all or any part of the Services.
"Required Insurances"	means the insurances set out herein and in the Order.
"RIDDOR"	has the meaning given to it in Paragraph 11.5(a) of Schedule 1 (<i>Mandatory Flowdown Provisions</i>)
"Secret Matter"	means any matter connected with this Sub-Contract or the performance of this Sub-Contract which is designated in writing by the Authority as "Top Secret" or "Secret" and shall include any information concerning the content of such matter and anything which contains or may reveal that matter
"Security Aspects Letter"	means the Authority executed security aspects letter to be provided by the Client to the Sub-Contractor on or before the Effective Date.
"Services"	means the services to be performed by the Sub-Contractor specified in the Order, including any changes made to those services in accordance with this Sub-Contract.
"Sites"	shall have the meaning set out in the Numbered Documents.
"Specification"	means the technical specification as documented in the statement of requirements 'SOR' applicable to the Services of the Sub-Contractor.
"Sub-Contract"	means a sub-contract placed by the Client on the Sub-Contractor. The following apply to and are incorporated into each Sub-Contract: (a) the Order; and (b) the terms and conditions of this Framework Sub-Contract.

"Sub-Contractor Security Personnel"	means Sub-Contractor Personnel together with any employee, staff, director or officer of any Sub-Contractor Or Sub-Sub-Contractor that is involved with performing obligations pursuant to the fulfilment by the Sub-Contractor of its obligations under this Sub-Contract, or otherwise has access to a Secret Matter.
"Sub-Sub-Contract"	means any Sub-Contract which the Sub-Contractor enters into with a third party in respect of the performance of any part of its obligations under this Sub-Contract
"Sub-Sub-Contractor"	means any party with whom the Sub-Contractor contracts with in respect of the performance of any part of its obligations under this Sub-Contract and any person that contracts at any tier to perform any part of, or provide good or services in respect of, in respect of the performance of, or in connection with, any part of the Sub-Contractor's obligations under this Sub-Contract.
"Supervisory Authority"	has the same meaning as given to it in Article 4 of GDPR.
"Supplier Cyber Protection Service"	means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.
"Third Party Contractor"	means a third party contractor engaged by the Authority operating at the Naval Base.
"Third Party Contractor Property"	means any property owned by a Third Party Contractor.
"Timber and Wood-Derived Products"	has the meaning given to it in Schedule 6 (<i>Timber and Wood Derived Products Policy</i>).
"Transparency Information"	means the content of this Sub-Contract in its entirety, including from time to time agreed changes to the Sub-Contract, and details of any payments made by the Client to the Sub-Contractor under the Sub-Contract.
"VAT"	means value added tax or any equivalent tax chargeable in the UK or elsewhere.

2. FORMATION OF SUB-CONTRACT

- 2.1 This Sub-Contract provides a framework and an agreed set of contract conditions under which Orders may be placed. The Client has no obligation to purchase and the Sub-Contractor has no obligation to supply any Services.
- 2.2 By entering into this Sub-Contract the Client does not grant any exclusivity, preferred sub-Contractor status or priority of any kind to the Sub-Contractor. The Client may purchase Services of the nature contemplated by this Sub-Contract from other Sub-Contractors, and may, if it chooses, go out to competitive tender for such Services.
- 2.3 The Client may place an Order as substantially set out in Schedule 9 of this Sub-Contract.
- 2.4 Each Order will incorporate and be performed in accordance with the terms set out in the Order, Numbered Documents and this Sub-Contract.
- 2.5 Where the Parties have agreed Rates as set out in Schedule 10 (*Sub-Contractor Pricing rates*), the Order Price quoted by the Sub-Contractor, and any Change Notices shall use those Rates.
- 2.6 The Sub-Contractor shall register and maintain its registration with JOSCAR for the duration of this Sub-Contract and any Orders issued pursuant to it.
- 2.7 The Sub-Contract between the Client and the Sub-Contractor comprises the Order, this Sub-Contract and the Numbered Documents constitute the entire agreement between the Client and the Sub-Contractor relating to the performance of the Services and supersedes and replaces any and all previous agreements, arrangements or understandings between the Client and the Sub-Contractor in respect thereof.
- 2.8 The Sub-Contractor hereby acknowledges and confirms to the Client that in entering into this Agreement it has placed no reliance upon any statement, representation or warranty made or given by the Client during the course of negotiations which is not reflected in the body of this Sub-Contract or any documents referred to herein. No other term, express or implied, forms part of this Sub-Contract. Save as expressly agreed in this Sub-Contract, no usage, custom or course of dealing forms part of or affects this Sub-Contract.
- 2.9 For the avoidance of doubt, the Sub-Contractor's own standard terms and conditions of engagement shall have no validity under this Sub-Contract.

3. DURATION

- 3.1 This Sub-Contract shall be effective from [DD MMM YYYY - Insert effective date, that must be on or after the last date on which the Sub-Contract is in final form and the final party to the Sub-Contract shall have signed the Sub-Contract] (the "Effective Date") and continue until [DD MMM YYYY] unless otherwise terminated in accordance with Clause 33 (*Termination*)
- 3.2 In the event that the duration of the Prime Contract is extended, then the Client may by written notice to the Sub-Contractor, served on or before 30th June 2026, require that the term of this Contract shall be extended
- 3.3 If this Sub-Contract expires or is terminated and there is any outstanding Order, then the terms of this Sub-Contract will continue in effect for the term of such Order provided that no new Orders may be entered into following the date of expiry or termination and provided that the Client may choose to terminate all or any Orders at the same times as the Sub-Contract.

4. ORDER OF PRECEDENCE

- 4.1 In the event of any conflict between the provisions of the Sub-Contract, the following order of precedence shall apply:
- 4.1.1 Schedule 1 (*Mandatory Flowdown Provisions*) of this Sub-Contract
 - 4.1.2 the Order as may be updated from time to time (excluding the Numbered Documents)
 - 4.1.3 the Sub-Contract terms (including the schedules, with the exception of Schedule 1)

4.1.4 the Specification; and

4.1.5 the Numbered Documents, excluding the Specification

5. **PERFORMING THE SERVICES**

5.1 The Sub-Contractor shall commence the Services on the Commencement Date set out in the Order.

5.2 The Sub-Contractor shall proceed regularly and diligently with the Services and, will perform its obligations under this Sub-Contract and carry out and complete the Services:

5.2.1 in accordance with the Order

5.2.2 in accordance with Good Industry Practice

5.2.3 in a manner that is not likely to be injurious to health or to cause damage to property;

5.2.4 in such a manner that it is undertaken safely and in compliance with all Naval Base Health & Safety and Security Requirements.

5.2.5 in accordance with the applicable Law and the Required Consents;

5.2.6 in compliance with all Environmental Laws which may apply from time to time to the performance of the Services and/or the occupation of the Naval Base by the Sub-Contractor

5.2.7 in a proper and workmanlike manner and all workmanship shall be of the standards described in the Numbered Documents.

5.2.8 The Sub-Contractor shall comply with all instructions given by the Client to the Sub-Contractor relating to the execution of the Services and which are in accordance with the Sub-Contract.

5.2.9 where applicable, the Sub-Contractor shall comply with the provisions of Plastic Packaging Tax as set forth in Schedule 8 (*Plastic Packaging Tax*)

5.2.10 in accordance with the Mandatory Policies;

5.2.11 in accordance with the Mandatory Flowdown Provisions;

5.2.12 in accordance with the Programme and shall use the Programme as the basis for progress reporting, scheduling, forecasting and controlling performance of the Services. Any Changes to the Programme shall be agreed and implemented in accordance with Clause 8 (*Early Warning and Change Control Procedure*) and

5.2.13 in accordance with all the obligations imposed on it as 'contractor' and, where indicated in the Order, as 'Principal Contractor' and/or 'Principal Designer', under the CDM Regulations insofar as they apply to the Services.

5.3 Insofar as it is responsible for any design Services, the Sub-Contractor shall:

5.3.1 exercise the Works and Services with reasonable skill, care and diligence of a professional experienced in carrying out and completing in relation to projects of a similar scale, scope, character, complexity and value.

5.3.2 ensure that Services shall be executed in accordance with such information and instructions as may from time to time be provided by the Client and to accord and comply with all the requirements of this Sub-Contract;

5.3.3 satisfy itself that any information and instructions provided by the Client in accordance with Clause 5.3.2 are sufficient and accurate and shall notify the Client in writing of any inconsistency insufficiency or inaccuracy therein within a reasonable time prior to the commencement of the Services save that where such

information and/or instructions are supplied after commencement of the Services the Sub-Contractor shall notify the Client within a reasonable time after receipt thereof of any such inconsistency insufficiency or inaccuracy so that the Client shall have the earliest opportunity to supply further and more accurate information or instructions as appropriate; and

- 5.3.4 the Sub-Contractor shall accept full responsibility and liability for any failure to meet or comply with information and instructions.
- 5.3.5 providing the full benefit of his knowledge, expertise, technical skill and ingenuity and the Sub-Contractor acknowledges that the Client will rely upon the skill and judgement of the Sub-Contractor in connection with all matters for which the Sub-Contractor is responsible under this Agreement;
- 5.4 Without prejudice to the Mandatory Flowdown Provisions and the Mandatory Policies, the Sub-Contractor and all personnel under its control shall have regard to the safety of all other persons who may work on or visit the Site(s) and for those who live and pass near to the Site(s) whose health and safety may be affected by the Services.
- 5.5 Unless otherwise agreed in writing with the Client, goods and materials provided and used by the Sub-Contractor in carrying out the Services shall be new and of satisfactory quality and conform in all respects with the Numbered Documents.
- 5.6 The Client shall grant to the Sub-Contractor such access to and use of the Site(s) as shall be required for the Sub-Contractor to carry out and complete the Services in accordance with this Sub-Contract and the Sub-Contractor shall make itself, its employees and all personnel under its control aware of any and all site safety and security arrangements (including, without limitation, as set out in the Mandatory Flowdown Provisions set out in Schedule 1).
- 5.7 The Sub-Contractor shall not change any of the Sub-Contractor's Key Personnel listed in the Order except with the Client's prior written approval, such approval not to be unreasonably withheld.
- 5.8 The Client shall, subject to the Mandatory Flow Down Provisions, provide access to the Site at such times as may be reasonably required by the Sub-Contractor for the performance of the Services and provide free of charge such drawings, data and information as may be available to the Client and as may be reasonably required by the Sub-Contractor for the performance of the Services.
- 5.9 The Sub-Contractor's performance of the Services shall be monitored by the Client in accordance with timely and accurate completion of the Milestones and Key Milestones as set out in the Order, and
 - 5.9.1 the Key Performance Indicators detailed at Schedule 7 (*Key Performance Indicators*).
- 5.10 Without limiting Clause 8 (*Early Warning and Change Control Procedure*), the Parties acknowledge and agree that the provisions of Schedule 7 (*Key Performance Indicators*) shall apply in relation to any failure by the Sub-Contractor to achieve timely and accurate completion of the Milestones and Key Milestones.
 - 5.10.1 Any Changes to the Programme shall be agreed and implemented in accordance with Clause 8 (*Early Warning and Change Control Procedure*).
- 5.11 In respect of any Milestone or Key Milestone:
 - 5.11.1 Where acceptance criteria are set out in the Milestone Summary Table in the Order, acceptance of the Services shall be subject to the Sub-Contractor meeting such acceptance criteria to the satisfaction of the Client.
 - 5.11.2 Where no acceptance criteria are set out in the Order, the Client shall have the right to review the Services after delivery, and acceptance shall take place on review by the Client that the Services are in accordance with the Order or, if no review is made, subject to Clause 8.3 the Milestone or Key Milestone shall be accepted within twenty (20) Days after delivery.
 - 5.11.3 If the Client is not satisfied that the Services is in accordance with the Order, and subject to Clause 8.3 the Client may in its absolute discretion give written notice to the Sub-Contractor to:

(a) reject the Milestone or Key Milestone and/or

(b) re-work the Services without delay at the Sub-Contractor's own expense.

6. SUB-CONTRACTING

6.1 The Sub-Contractor shall, and shall procure that Sub-Sub-Contractors shall, at all times throughout the performance of the Services, have in place and be certified under a recognised independently audited environmental management system such as ISO14001:2015 or equivalent standard, applied to all aspects of the Services.

6.2 Where any part of the Services is to be undertaken by a Sub-Sub-Contractor, the Sub-Contractor warrants that it shall enter into a contract with the Sub-Sub-Contractor on terms materially similar to this Sub-Contract, including explicitly, but not limited to:

6.2.1 Clause 12 (*Intellectual Property*);

6.2.2 Clause 13 (*Force Majeure*);

6.2.3 Clause 27 (*Liability*);

6.2.4 Clause 28 (*Insurance*); and

6.2.5 Schedule 1 (*Mandatory Flowdown Provisions*);

6.2.6 Schedule 2 (*Mandatory Policies*)

6.3 The Sub-Contractor will be liable for the acts and omissions of the Sub-Sub-Contractor as if they were acts and omissions of the Sub-Contractor itself.

7. COMPLETION OF THE SERVICES

7.1 subject to Schedule 7 (*Key Performance Indicators*), the Sub-Contractor shall:

7.1.1 complete the Services and each part of them by the date for completion to the reasonable satisfaction of the Client and in accordance with the Numbered Documents and/or any other specifications and instructions as may be supplied to the Sub-Contractor by the Client from time to time;

7.1.2 during the course of the Services, maintain a record of outstanding items of work in preparation for acceptance by the Client. This record shall be continually updated to show new items as they arise and to reflect the deletion of completed items as agreed with the Sub-Contractor and the Client. Action plans for completion of the Services shall be prepared by the Sub-Contractor and provided to the Client.

7.2 The Sub-Contractor shall notify the Client in writing when it considers the Services to have reached completion and provided that:

7.2.1 inspections and tests on all Services have been successfully completed and recorded to give assurance that the Services has been completed in accordance with Good Industry Practice, any relevant standards identified in the Order and elsewhere in this Sub-Contract;

7.2.2 the Services are free from defects and omissions, or all the defects and omissions are recorded and a rectification plan has been prepared by the Sub-Contractor and agreed with the Client in writing prior to the date for completion set out in the Order (where relevant); and

7.2.3 where applicable, the Site has been cleaned to the satisfaction of the Client, including removal of any risings, and at all times in accordance with the handover provisions in the Numbered Documents.

7.3 NOT USED

7.4 NOT USED

7.5 The Client shall have the right to reject any Services, workmanship, article or material, which does not meet the specified standards.

8. **EARLY WARNING AND CHANGE CONTROL PROCEDURE**

8.1 The Sub-Contractor notify the Client in writing of any delay in or circumstances which may give rise to delay in the commencement, performance or completion of the Services

8.2 **Early Warning**

8.2.1 The Sub-Contractor shall notify the Client immediately upon becoming aware of any potential delay (Early Warning Event) whenever such circumstances become reasonably apparent, giving full details of the circumstances giving rise to the delay and an estimate of the extent of the anticipated delay in completion of the Services and shall give such other information set out in Schedule 3 (*Early Warning Notice*)

8.2.2 At any time following receipt of an Early Warning Notice, the Client may require the Sub-Contractor to attend a meeting with the Client during which the Parties shall consider the appropriate action to be taken.

8.2.3 Without prejudice to Clause 8.2.1, if the Sub-Contractor does not notify an Early Warning Event within five (5) Days of becoming aware of the event, it is not entitled to a change in the price, completion date or key date under the relevant Order unless the event arises from the Client or its duly appointed representative giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption.

8.2.4 Any potential Change highlighted as a result of notification of an Early Warning Event shall be addressed by the Parties using the Change Control Procedure under Clause 8 of this Sub-Contract.

8.3 **Order Change Control Procedure**

8.3.1 Where the Client or the Sub-Contractor sees a need to make a change to the Order, the Client may at any time request, and the Sub-Contractor may at any time recommend, such Change in accordance with the Change Control Procedure set out in this Clause 8.3 ("Order Change Control Procedure").

8.3.2 Until such time as a Change is agreed in accordance with the Order Change Control Procedure, the Client and the Sub-Contractor shall, unless otherwise agreed in writing, continue to perform the Services and/or Services under the Order in compliance with its terms before such Change.

8.3.3 Any discussions which may take place between the Client and the Sub-Contractor in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

8.3.4 Any work undertaken by the Sub-Contractor and the Sub-Contractor's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Clause 8.3 ("Order Change Control Procedure"), shall be undertaken entirely at the expense and liability of the Sub-Contractor.

8.3.5 In the event that the client wishes to instruct or the sub-contractor wishes to request a Change pursuant to this clause 8.3 ("Order Change Control Procedure"), the relevant party shall serve notice of the required Change on the other party in the format set out in the Schedule 4 (*Change Notice*)

8.3.6 Where the Client requests a Change the Sub-Contractor shall, within five (5) Days of receipt of the Change Notice referred to in Clause 8.3.5 above, issue to the Client a quotation for the Change and the Client shall review and

- a) accept the quote, and issue an instruction to the Sub-Contractor to implement the Change in the form of an approved Change Notice or
- b) respond asking for changes to the quote and that the Sub-Contract re-submit the quote with these changes or
- c) reject the quote and not instruct the Change.

8.3.7 Where the Sub-Contractor recommends a Change the Client shall, following receipt of the notice referred to in clause 8.3.5 above, review and either

- a) accept the quote, instruct the Change and issue an approved Change Notice or
- b) respond asking for changes to the quote and that the Sub-Contractor re-submit the quote with these changes or
- c) reject the quote and not instruct the Change.

8.3.8 Upon receipt of the approved Change Notice, the Sub-Contractor shall implement the Change in accordance with the Change Notice and such other supporting documentation issued by the Client, including without limitation an updated Order.

8.3.9 Where a change is a Mandatory Change, the Sub-Contractor may not refuse to implement the proposed Mandatory Change.

8.4 Recording Changes

8.4.1 Without prejudice to Clause 8 (*Early Warning and Change Control Procedure*), neither this Sub-Contract nor any Order may be amended except by the written agreement of the duly authorised representatives of the Parties.

9. REPORTING

9.1 Performance Reporting

9.1.1 The Sub-Contractor shall, unless otherwise agreed in writing, within five (5) Days after the end of each calendar month provide a report to be agreed with the Client detailing:

- a) the Sub-Contractor's performance against the Milestones and Key Milestones;
- b) the Sub-Contractor's performance for each KPI, within a Reporting Period falling due for measurement at the end of the previous calendar month; and
- c) any Performance Adjustments that should be released in accordance with Schedule 7 (*Key Performance Indicators*)

9.2 Where applicable, and as agreed with the Client as set out in the Order, provision of a monthly assurance report on compliance with CDM 2015 in role of Principal Designer and Principal Contractor.

9.3 The Sub-Contractor shall in respect of the Services report to the Client any risks, issues or non-compliance with applicable Law or regulations (including Authority policy). All instances of non-compliance shall be reported to the Client following identification as soon as possible but no later than one (1) Day

This report will include:

- (a) the cost and impact of the Client and the operations at the Naval Base; and
- (b) actions required to remedy or mitigate such non-compliance.

9.4 Where requested by the Client, the Sub-Contractor shall provide an annual social value report detailing spend in the local supply chain within a twenty (20) mile radius of HM Naval Base Portsmouth.

9.5 The Sub-Contractor shall supply the Health, Safety and Environmental reports required by Clause 11 of Schedule 1 (*Mandatory Flowdown Provisions*) within the agreed timescales

10. **WARRANTY**

10.1 The Sub-Contractor warrants to the Client that the Services are provided:-

10.1.1 in accordance with the requirements and specifications set out in the Order;

10.1.2 NOT USED

10.1.3 all workmanship shall be executed with proper skill and care, in line with Good Industry Practice, and be of a standard compatible with the standards applicable to the Services.

10.1.4 free from defects (whether actual or latent) in design, materials and workmanship

10.1.5 with the level of skill, care and diligence to be expected of a properly qualified and competent professional consultant/designer and contractor experienced in providing services of a similar size, scope value, timescale, complexity and character to the Services

10.1.6 in accordance with generally recognised commercial practices and standards in the industry including Good Industry Practice; and

10.1.7 in compliance with all applicable laws and regulations as well as all of the Client's and the Authority's (as applicable) site policies and rules.

10.1.8 The warranties in Clause 10.1 shall, in respect of each of the Services, continue for twelve calendar months from the date of acceptance of the relevant Services, unless otherwise agreed in writing.

10.2 If there is a defect in the Services during the warranty period, the Sub-Contractor shall without delay and upon receipt of notice from the Client but at the absolute discretion of the Client:

10.2.1 refund the Client the price of the defective Services; or

10.2.2 re-perform the contracted Services at the Sub-Contractor's own expense and risk provided that, if the Sub-Contractor fails to do so, the Client may arrange for them to be performed by a third party (and all such costs incurred by the Client shall be refunded by the Sub-Contractor), and where the Sub-Contractor re-performs the Services the warranty shall continue for twelve (12) calendar months from the date of acceptance by the Client of the re-performed Services.

10.3 The Sub-Contractor agrees that all warranties attaching to the Services shall be capable of being assigned to the Authority by the Client without prior written notice to the Sub-Contractor.

10.4 The provisions of this Clause 10 shall survive termination or expiry of this Sub-Contract, howsoever arising.

11. **COLLATERAL WARRANTIES**

11.1 When required by the Client, the Sub-Contractor shall provide signed collateral warranties/design warranties/duty of care documents in a form to be agreed between the Parties within five (5) Days from receipt of a written request from the Client. It is a condition precedent to any payment of monies due to the Sub-Contractor that the Sub-Contractor has, at the time such payment falls due, delivered to the Client all collateral warranties and / or design warranties and / or duty of care documents required under the Sub-Contract.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Sub-Contractor acknowledges and agrees that all Foreground IP shall vest in and be the property of the Authority and the Sub-Contractor assigns to the Authority absolutely with full title guarantee all its right, title to and all present and future rights and interest in the Foreground IP, including:
- 12.1.1 the absolute entitlement to any registrations granted pursuant to any of the applications comprised in the Foreground IP; and
 - 12.1.2 the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Foreground IP whether occurring before, on, or after the Commencement Date.
- 12.2 The Sub-Contractor shall mark any copyright works it creates under the terms of or in connection with the performance of this Sub-Contract with the legend: '© Crown-owned copyright [insert the year of generation of the work]'.
- 12.3 The Sub-Contractor shall use reasonable endeavours to ensure that the Services and any Foreground IP created, brought into existence or acquired during the term of this Sub-Contract vest, and remain vested throughout the term of this Sub-Contract, in the Authority and the Sub-Contractor shall include an equivalent provision in all agreements with any Sub-Sub-Contractor (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.
- 12.4 Without prejudice to Clause 12.1, where any such Intellectual Property Rights are or become vested in any third party, the Sub-Contractor shall use all reasonable endeavours to procure the grant to the Authority and the Client of a perpetual, irrevocable, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) with effect from the later of the Commencement Date and the date on which such rights are or become vested in such third party.
- 12.5 As soon as it becomes aware, the Sub-Contractor shall promptly notify the Client of:
- 12.5.1 any invention or design the subject of patent or registered design rights (or application therefor) owned by a third party which appears to be relevant to the performance of this Sub-Contract or to use by the Client and/or the Authority of anything required to be done or delivered under this Sub-Contract;
 - 12.5.2 any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of this Sub-Contract or subsequent use by the Authority of anything delivered under this Sub-Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958; and
 - 12.5.3 any allegation of infringement of intellectual property rights made against the Sub-Contractor and which pertains to the performance of this Sub-Contract or subsequent use by the Client and/or the Authority of anything required to be done or delivered under this Sub-Contract.
- 12.6 This Clause 12 does not apply in respect of articles or services normally available from the Sub-Contractor as a commercial off the shelf (COTS) item or service. If the information required under Clause 12.5 has been notified previously, the Sub-Contractor may meet its obligations by giving details of the previous notification.
- 12.7 If, under Clause 12.5, a relevant invention or design is notified to the Client by the Sub-Contractor after the date of this Sub-Contract, then the Sub-Contractor acknowledges and agrees that the Authority will issue a written authorisation to the Sub-Contractor, as though the Sub-Contractor was the Client.
- 12.8 The Background IP rights of a Party shall remain vested in that Party or its licensor.
- 12.9 If any of the Sub-Contractor's Background IP is included in or is necessary for the use of any Services it must be clearly and legibly marked and/or identified by the Sub-Contractor and the Sub-Contractor grants to the Client an irrevocable, perpetual, non-exclusive, worldwide and royalty-free licence (with the right to grant sub-licences) to use the Sub-Contractor's Background IP as may be necessary for:

12.9.1 the purposes of this Order and the Prime Contract; and

12.9.2 the keeping, use, development or disposal of the Foreground IP.

12.10 The Sub-Contractor represents and warrants to the Client that the Services and any Foreground IP and anything done by and any use by the Clients in relation to the Services and any Foreground IP will not infringe any Intellectual Property Rights of a third party.

12.11 The Sub-Contractor shall indemnify each Indemnified Party against any and all liability, loss, claims, costs, expenses, damages, payments and royalties of any kind whatsoever incurred by an Indemnified Party as a result of or in connection with any claim or allegation that the Intellectual Property Rights owned or controlled by a third party are infringed by the use of the Services and/or any Foreground IP.

12.12 Nothing in the Sub-Contract shall give or be deemed to give either Party during or after the term of the Sub-Contract any right, title or interest in any of the other Party's trade marks, service marks or trade names.

13. **FORCE MAJEURE**

13.1 Where a Force Majeure Event directly causes or results in the Client or the Sub-Contractor (the "**Affected Party**") failing to perform or being delayed in performing any of its obligations owed to the other party (the "**Other Party**") under this Sub-Contract, the remaining provisions of this Clause 13 shall apply.

13.2 The Affected Party shall give notice ("**Notice**") to the Other Party as soon as possible and in any event within two (2) Days of its Contract Manager becoming aware of a Force Majeure Event. Such Notice shall contain an estimate of the period of time required to overcome the Force Majeure Event and its effects, and details of the obligations under this Sub-Contract in respect of which the Affected Party is claiming relief.

13.3 Where the Sub-Contractor is the Affected Party:

13.3.1 the Sub-Contractor must use and continue to use all reasonable endeavours to avert or prevent the occurrence of the relevant Force Majeure Event and/or to minimise and mitigate the effects of such Force Majeure Event on the provision of the Services as soon as reasonably practicable after the onset of the event, acting in accordance with Good Industry Practice;

13.3.2 the Sub-Contractor must, within three (3) Days (or by the end of such longer period as the Sub-Contractor and the Client shall agree) of receipt by the Client of the Notice referred to in Clause 13.2, confirm and provide supporting evidence to the Client's satisfaction that:

- (a) neither it nor any Sub-Sub-Contractor could reasonably have foreseen the occurrence or consequences of the relevant Force Majeure Event and could not have avoided such occurrence or consequences by taking steps which they might reasonably be expected to have taken, without incurring material additional expenditure;
- (b) the Force Majeure Event has given rise to a need for the relief specified by the Sub-Contractor; and
- (c) it has complied with Clause 13.3.1.

13.4 For so long as and to the extent that the Force Majeure Event directly causes or results in the Sub-Contractor failing to comply with any of its obligations under this Sub-Contract and provided it has complied with Clauses 13.3.1 and 13.3.2, the Sub-Contractor shall be relieved from any action for failure to comply with such obligations.

13.5 The Affected Party shall notify the Other Party within thirty-six (36) hours of the cessation of the Force Majeure Event, and shall resume performance of any affected obligations as soon as possible after giving such Notice.

Prolonged Force Majeure

13.6 If a Force Majeure Event continues for a period of six (6) months or more from the date upon which the Affected Party serves notice on the Other Party of its occurrence in accordance with Clause 13.2, the Client may by ten (10) Days' notice to the Sub-Contractor:

13.6.1 terminate any Services affected by the Force Majeure Event; or

13.6.2 if substantially all of the parties' obligations have been affected by the Force Majeure Event, terminate this Sub-Contract as a whole,

and this Sub-Contract (or the part of this Sub-Contract related to the affected Services) shall be terminated providing that the circumstances comprising the Force Majeure Event still subsist at the date when the period of notice has expired.

13.7 In determining whether to terminate (in whole or in part) the obligations of the Sub-Contractor and the Client in respect of the Services affected by the Force Majeure Event or whether to terminate this Sub-Contract as a whole, the Client shall act reasonably in all the circumstances, having regard to the interests of both the Client and the Sub-Contractor and having regard to whether the Client or the Sub-Contractor is able to source the carrying out of the Services or materials provided by the Sub-Contractor from a third party.

13.8 On termination in accordance with Clause 13.6, the Order Price will be adjusted in respect of any Services which are affected by such termination as a Mandatory Change.

13.9 In the event of this Sub-Contract being terminated by the Client pursuant to this Clause 13 then:

13.9.1 the terms of Clauses 33.3, 33.9 and 33.10 shall apply in relation to Services; and

13.9.2 the costs of termination incurred by the parties shall lie where they fall.

13.10 The Sub-Contractor shall in any Sub-Sub-Contract, the value of which is one hundred thousand pounds (£100,000) or over placed by it on or after the Effective Date with any one Sub-Sub-Contractor or supplier in connection with or for the purpose of this Sub-Contract, include terms equivalent to the terms of Clauses 13.3 to 13.7 to terminate such Sub-Sub-Contract.

14. **AMENDMENTS TO THE SUB-CONTRACT**

14.1 The Sub-Contract shall only be amended by the written agreement of the duly authorised representatives of the Parties. Where the Client or the Sub-Contractor sees a need to make a change to the Sub-Contract, the Client may at any time request, and the Sub-Contractor may at any time recommend a Change by submitting a Change Notice for approval, in the format of Schedule 4 (*Change Notice*)

14.2 The written agreement shall be the Change Notice detailed in Schedule 4 (*Change Notice*)

14.3 The amendment shall come into force only when the Change Notice is counter signed by each of the Parties.

14.4 No amendment shall come into effect unless it satisfies Clause 14.3

15. **LABOUR, TOOLS, PLANT & MATERIALS**

15.1 The Sub-Contractor shall supply all necessary labour, tools, plant, equipment and materials necessary for execution of the Services.

15.2 The Sub-Contractor shall be liable for the storage and safekeeping of the Sub-Contractor's own tools plant and equipment brought to Sites. The granting of permission to the Sub-Contractor to use the Client's storage facilities shall not render the Client liable for any loss or damage thereto unless such loss or damage is caused by the negligence of the Client its servants or agents.

16. CLIENT'S PLANT AND EQUIPMENT

- 16.1 Without limiting Paragraph 12 (*GFA*) of Schedule 1 (*Mandatory Flowdown provisions*) with respect to any GFA, any plant, tools, scaffolding or other equipment which may be supplied by the Client for the use of the Sub-Contractor not delivered in good condition shall be notified in writing to the Client within 48 hours of delivery to the Sites or the arrival of the Sub-Contractor at the Sites. Such notification must specify the shortage or defect and the Client must be given an opportunity to inspect and investigate any complaint before any use is made of such plant tools scaffolding or equipment.
- 16.2 Without limiting Paragraph 12 (*GFA*) of Schedule 1 (*Mandatory Flowdown provisions*) with respect to any GFA, the Sub-Contractor shall be responsible for the storage and safe-keeping of such plant, tools, scaffolding or other equipment and shall only use them in a workmanlike and safe manner and shall return the same to the Client in good condition (fair wear and tear excluded) and shall be liable to the Client for any damage thereto and indemnify the Client against all liabilities claims damages loss fines costs and/or expense (including reasonable legal and other professional expenses) incurred by the Client as a result of the use or storage of such plant tools etc. In the event any items aforesaid shall be lost or damaged the Sub-Contractor shall be responsible for the full cost of replacement thereof.
- 16.3 No person shall be allowed to operate the Client's or the Authority's plant without written consent from the Client and/or the Authority (as applicable) and, where appropriate, a charge for such operation may be made by the Client.

17. SERVICES ON SITE

- 17.1 No guarantee is given or implied that the whole of the Services may be executed continuously and the Sub-Contractor is deemed to have allowed in the Order Price for carrying out the Services for executing the whole of the Services in such a manner and sequence as the Client may reasonably require including working either continuously or in sections or staging the Services to suit progress of other trades. The Order Price for carrying out the Services is deemed to cover the cost of multiple visits to Sites as necessary.
- 17.2 The Sub-Contractor shall have examined the Sites and be satisfied as to the nature and extent of the Services, the physical condition of and around the Sites (including access to the Sites) and the materials and types of equipment and facilities needed.
- 17.3 The Sub-Contractor shall be acquainted with any statutory or imposed restrictions for the time being in force that may affect the execution or completion of the Services.
- 17.4 Unless otherwise specified in the Order, and in each case in accordance with Schedule 2 (*Mandatory Policies*):
- 17.4.1 the Sub-Contractor shall be responsible for the proper unloading of materials delivered to the Sites for the Services and the proper handling of such materials;
 - 17.4.2 the Sub-Contractor shall at its own expense supply all necessary lighting watching and other attendances for the purposes of the Services and shall provide and remove all necessary temporary workshops sheds offices latrines and such other buildings as shall be reasonably required by the Client at such places on the Sites as the Client may from time to time direct; and
 - 17.4.3 all excess materials, waste packing and general waste arising from the Services shall be collected regularly by or on behalf of the Sub-Contractor and removed from the Sites at no expense to the Client failing which the Client may after 24 hours' notice to the Sub-Contractor effect such removal and recover the cost thereof from the Sub-Contractor.
- 17.5 The Sub-Contractor shall be responsible for deconflicting and/or coordination of the Services with any other works being carried out on the Site(s).

18. TITLE STORAGE AND SAFEKEEPING OF MATERIALS

- 18.1 Subject to Paragraph 12 (*GFA*) of Schedule 1 (*Mandatory Flowdown Provisions*) and Paragraph 15 (*Vesting*) of Schedule 1 (as applicable):

- 18.2 Title to all materials supplied by the Client to the Sub-Contractor for or in connection with the Services shall remain vested in the Client
- 18.3 The Sub-Contractor shall not without the express consent in writing of the Client remove or cause to be removed from the Sites any goods or materials delivered thereto for incorporation into the Services.
- 18.4 The Sub-Contractor shall take all reasonable precautions for the safekeeping of goods and materials delivered to the Sites for the Services and shall ensure that such materials are appropriately stored or stockpiled pending their use in the Services in particular with regard to any necessary or unusual protection from exposure to weather and shall comply at the Sub-Contractor's own expense with any directions given by the Client for the storage and safekeeping of such materials.
- 18.5 Subject to Paragraph 15 (*Vesting*) of Schedule 1 (*Mandatory Flowdown Provisions*), the Sub-Contractor is responsible for and accepts the risk of loss or damage (other than loss or damage due to the negligence of the Client its servant or agents) to goods and materials until such goods and materials have been fully and finally incorporated into the Services. For the avoidance of doubt, the Sub-Contractor will be responsible for the risk of such loss or damage where title to the goods and materials has transferred from the Sub-Contractor to the Client.

19. **TIMBER AND WOOD-DERIVED PRODUCTS**

- 19.1 Where required to provide Timber and Wood-Derived Products as part of the Services or otherwise pursuant to this Sub-Contract, the Sub-Contractor shall provide such Timber and Wood-Derived Products in accordance with Schedule 6 (*Timber and Wood Derived Products Policy*).

20. **PRICE**

- 20.1 The price for the Services shall be agreed at the time of the Order (Order Price) and shall be in accordance with the Sub-Contractor's Agreed Pricing Rates.
- 20.2 The Order Price shall, unless otherwise agreed be non-revisable and shall
- 20.2.1 be exclusive of VAT and,
- 20.2.2 in the case of non-EU Supplies, exclusive of import taxes.
- 20.3 If VAT is payable, it shall be separately identified on the invoice and shall be payable by the Client subject to receipt of a valid VAT invoice. No additional charges shall be payable by the Client for packaging, insurance or delivery unless otherwise agreed and any such charge shall be separately identified on the invoice.
- 20.4 The Order Price shall be payable by the Client to the Sub-Contractor in accordance with the Milestone Summary Table and the provisions of Clause 21 (*Payment to the Sub-Contractor*).

21. **PAYMENT TO THE SUB-CONTRACTOR**

- 21.1 The Client is a signatory to the UK Prompt Payment Code. Payment for the Services will be made against individual Milestones and Key Milestones. The individual Milestones, Key Milestones, Milestone Amounts and the Milestone Summary Table will be further detailed in the relevant Order
- 21.2 The Sub-Contractor shall ensure that any Milestone and Key Milestone which was due for completion (including those that are outstanding from previous months) have been delivered to the agreed programme and in accordance with the Order
- 21.3 When the Sub-Contractor achieves a Milestone or Key Milestone, in accordance with the Milestone Summary Table within the Order, the Sub-Contractor will be entitled to make a payment application for the agreed amount for that Milestone or Key Milestone.
- 21.4 Each invoice must:

- 21.4.1 be clearly addressed to the legal identity of the Client;
 - 21.4.2 be sent (separately from any Services) c/o Accounts Payable Department as specified on the Order;
 - 21.4.3 reference the Client's Order number authorising the requisition of the relevant Services and the date of the relevant Order;
 - 21.4.4 identify each relevant Milestone, Key Milestone and Deliverable completed,
 - 21.4.5 apply any Performance Adjustments in accordance with Schedule 7 (*Key Performance Indicators*); and
 - 21.4.6 where applicable, state VAT at the prevailing rate.
- 21.5 The Sub-Contractor acknowledges and agrees that invoices shall only be passed for payment by the Client if
- 21.5.1 they comply with the provisions of Clauses 21.3 and 21.4; and
 - 21.5.2 if the Client does not issue a Pay Less Notice pursuant to Clause 21.8.
- 21.6 Should any invoice contain incomplete or incorrect information or an incorrect or invalid charge, the Client will be entitled to reject such invoice and return it to the Sub-Contractor or ask the Sub-Contractor to have it rectified or resubmitted (any such rectified shall become due for payment within thirty (30) calendar days (excluding bank public holidays) of the date on which the resubmitted invoice is received) or request the Sub-Contractor to issue a credit note to correct the error.
- 21.7 The final date for payment shall be thirty (30) calendar days from the due date (the **"Final Date for Payment"**).
- 21.8 In accordance with the provisions of Schedule 7 (*Key Performance Indicators*) and not later than ten (10) Days before the Final Date for Payment, the Client may give written notice to the Sub-Contractor which shall state its intention to pay less than the Milestone Amount (**'Pay Less Notice'**), the amount the Client considers to be due on the date the notice is served and the basis on which that sum is calculated
- 21.9 Notwithstanding anything in this Sub-Contract, the Client shall be entitled to deduct from any money otherwise due to the Sub-Contractor (including any retention) the amount of any loss and damage suffered or incurred or which will be suffered or incurred by the Client as a result of any default by the Sub-Contractor (subject to the Client giving notice of the intention to make any such deduction in accordance with the relevant provisions of the Sub-Contract).
22. **INTEREST**
- 22.1 If either party fails to make payment in accordance with this Sub-Contract the other party shall be entitled, in addition to any unpaid amount that should properly have been paid, to simple interest on that amount from the Final Date for Payment until the date of actual payment such interest to be calculated daily at an annual rate of 2% above the Bank of England base rate which is current at the date the payment became overdue. It is agreed that this Clause 22 constitutes a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998, as amended by the Late Payment of Commercial Debts Regulations 2002.
23. **CONSTRUCTION INDUSTRY SCHEME**
- 23.1 The Client may make any deduction in respect of tax from any payments to be made under the Sub-Contract in accordance with Finance Act 2004 or any amendment or re-enactment thereof or any similar or equivalent legislation whether enacted before or afterwards. No aspect of the operation in good faith by the Client of the Construction Industry Scheme shall vitiate this Sub-Contract.
24. **VAT**
- 24.1 Where any cost or expense under this Sub-Contract is to be reimbursed, refunded or taken into account in any computation, the amount of that cost or expense shall be net of any VAT to the extent that the person meeting such

cost or expense is able to recover such VAT as input tax under the provision of the UK Value Added Tax Act 1994 or under any other relevant legislation.

25. **IMPORTS**

- 25.1 The delivery term in respect of any Goods shall be DAP (Incoterms® 2020).
- 25.2 All Goods must be properly and securely packed.
- 25.3 The Sub-Contractor shall quote the Order number and item number on all documents and packages sent by it to the Client in respect of the Sub-Contract.
- 25.4 On delivery of each consignment of the Goods, the Sub-Contractor shall deliver to the Client such documents as are required by the Sub-Contract, including without limitation, customs export documents, advice notes, certificates of conformity and civil approved certificates and, if the Sub-Contractor is not the original manufacturer of the Goods, copies of the original manufacturer's certificate of conformity or civil approved certificate together with test figures and heat treatment particulars, where applicable.
- 25.5 If the Sub-Contractor fails to comply with the provisions of this Clause 25, the Client shall be under no obligation to accept delivery of the relevant Goods.
- 25.6 The Order Price shall be inclusive of UK Customs and Excise or other duty payable. The Sub-Contractor shall not make any claim for drawback of UK import duty on any item procured or supplied by it which may be for shipment overseas.
- 25.7 In some circumstances a waiver of import duty may be raised in accordance with EC Council regulation EC 150/2003 providing that the military equipment being procured is:
- 25.7.1 for use by or on behalf of the HM Armed Forces;
 - 25.7.2 authorised for end-use; and
 - 25.7.3 holds a 'Certificate for Military Equipment' ("**Waiver Certificate**") issued by the Authority.
- 25.8 If a requirement for a Waiver Certificate arises the Sub-Contractor should forward details of the goods to be imported and the exporting company to the Client Contract Manager who will arrange for the certificate to be raised in accordance with EC (Council Regulation) EC 150/2003.
- 25.9 The parties acknowledge and agree that the Authority is the intended owner for VAT purposes of any goods and materials imported into the United Kingdom for the purpose of this Sub-Contract.

26. **EXPORT**

- 26.1 If the Supplies constitute Controlled Materials then the provisions of Schedule 5 (*Export Control*) shall apply
- 26.2 Where the Sub-Contractor requires access to Client information that is Controlled Material and that requires export licences or other authorisations to enable such access by the Sub-Contractor, the Client shall ensure that the Controlled Material is identified as such and that the required licences and/or other authorisations are in place.
- 26.3 Unless otherwise agreed, all supplies will be delivered to and performed in the UK and all Client information will be held in the UK.

27. LIABILITY LIMITS*Sub-Contractors Liability*

27.1 Subject always to Clauses 27.5 (Unlimited Liability) and 27.6 (Irrecoverable Losses), the Sub-Contractor's aggregate liability in respect of all Losses incurred by the Client whether arising under contract, negligence, misrepresentation or otherwise under or in connection with each Order as a result of Defaults by the Sub-Contractor shall be limited:

- a. in respect of any liability which is not covered by any of the Required Insurances, to an amount equal to one hundred percent (100%) of the Order Price of the relevant Order; and
- b. in respect of any liability which is recoverable (or would have been so recoverable if the Sub-Contractor had complied with its obligations under Clause 28 (Insurance) of this Sub-Contract) under any of the Required Insurances, to the amount of insurance cover specified as being required for each relevant insurance policy.

27.2 The Parties agree that the limitation in Clause 27.1 is reasonable given each Party's respective commercial position and the Sub-Contractor's ability to obtain insurance in respect of the risks arising under or in connection with the Sub-Contract.

27.3 Milestone Retentions and any performance retentions or deductions pursuant to Schedule 7 (Key Performance Indicators) deducted from the Order Price shall not be taken into consideration when calculating the Sub-Contractor's liability under Clause 27.1

Client's Liability

27.4 Subject to Clauses 27.5 (Unlimited Liability) and 27.6 (Irrecoverable Losses), the Client's aggregate liability in respect of Losses incurred by the Sub-Contractor under or in connection with this Sub-Contract, whether arising under contract, negligence, misrepresentation or otherwise shall be limited to one hundred percent (100%) of the Order Price of the relevant Order.

Unlimited Liability

27.5.1 Neither Party shall limit its liability in respect of the following:

- (a) death or personal injury;
- (b) fraud, fraudulent misrepresentation or corruption including, as applicable, any Client Personnel, Sub-Contractor Personnel or Sub-Sub-Contractors;
- (c) gross negligence, wilful default or abandonment;
- (d) any liability which cannot be limited at Law including under the Sale of Goods Act 1979, Supply of Goods (Implied Terms) Act 1973 or the Supply of Goods and Services Act 1982, or liability for defective products under Section 2 of the Consumer Protection Act 1987;
- (e) any other losses which cannot be excluded or limited by applicable law; or
- (f) any losses caused by wilful misconduct.

27.5.2 The Sub-Contractor's liability in relation to the following shall be unlimited:

- (a) any costs or expenses which the Sub-Contract is obliged to or does expend in carrying out its obligations under this Sub-Contract;
- (b) any liability of the Sub-Contractor to the Client arising as a result of or in connection with the Client's right to require the Contractor to correct non-conforming Services in accordance with this Sub-Contract;

- (c) any Losses incurred by or Claims made against the Client due to breach of statutory duty which arose out of or in consequence of any contravention by the Sub-Contractor of this Sub-Contract;
- (d) any breach of or liability under:
 - (i) The following provisions of Schedule 1 (*Mandatory Flowdown Provisions*):
 - (1) paragraph 2.2 (*Required Consents*);
 - (2) paragraph 8 (*Confidentiality and Freedom of Information*);
 - (3) paragraph 10 (*Data Protection*);
 - (4) paragraph 11.1 (*Damage to Government Property*); and
 - (5) paragraph 11.11 (*Environmental Matters*);
 - (ii) Clause 12 (*Intellectual Property Rights*); and
 - (iii) Schedule 5 (*Export Control*);
- (e) any liability for physical damage to the works and tangible property of the Client, the Authority or any third party resulting from the Sub-Contractor negligence;
- (f) the Client's right to apply for an order for injunctive relief or specific performance or seek damages in respect thereof;
- (g) the Sub-Contractor's liability to pay any taxes as expressly provided by this Sub-Contract; and
- (h) any interest payable under this Sub-Contract.

27.6 Irrecoverable Losses

- 27.6.1 Subject to Clauses 27.5 (*Unlimited Liability*) and 27.6.2 and save where expressly permitted under the terms of this Sub-Contract, neither Party may recover from the other Party or any of its officers, agents or employees any Irrecoverable Losses.
- 27.6.2 Notwithstanding Clause 27.6.1 but subject to Clause 27.1 and without limiting the Client's entitlement to recover other types of loss, the Sub-Contractor agrees that the Client may recover the following from the Sub-Contractor as direct Losses from the Sub-Contractor to the extent that they arise as a result of a Default by the Sub-Contractor:
 - (a) any additional operational and/or administrative costs and expenses incurred by the Client, including costs relating to the time spent by or on behalf of the Client in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges;
 - (c) the additional cost of procuring replacement Services for the remainder of the Contract Period and/or replacement Contractor Deliverables, which shall include any incremental costs associated with such replacement Services and/or replacement Contractor Deliverables above those which would have been payable under this Sub-Contract;
 - (d) any compensation or interest paid to a third party by the Client;
 - (e) any fine or penalty incurred by the Client pursuant to Law and any costs incurred by the Client in defending any proceedings which result in such fine or penalty; and

- (f) any identified savings.

28. **INSURANCE**

- 28.1 The Sub-Contractor undertakes and warrants to the Client that it will take out and maintain the Required Insurances set out herein and/or in the Order and shall not render any of such policies void by any of its acts or omissions.
- 28.1.1 a policy of Public Liability Insurance for an amount not less than £10 million (or such higher amount as may be specified in the Order) per event or series of events in respect of loss of or damage to property of the Client, the Authority or end user, or death, disease, illness or injury to persons resulting from provision of the Services;
- 28.1.2 where applicable and stated in the relevant Order a policy of Product Liability Insurance for an amount not less than £10 million (or such higher amount as may be specified in the Order) per event or series of events in respect of loss of or damage to property of the Client, the Authority or end user, or death, disease, illness or injury to persons resulting from provision of the Services;
- 28.1.3 a policy of Professional Indemnity Insurance for an amount not less than £5 million (or such higher amount as may be specified in the Order) per event or series of events;
- 28.1.4 where applicable and stated in the relevant Order, a policy of Marine Insurance for an amount not less than £10 million (or such higher amount as may be specified in the Order);
- 28.1.5 where applicable and stated in the relevant Order, a policy of Cyber Technical Errors and Omissions Insurance for an amount not less than £5 million (or such higher amount as may be specified in the Order) per event or series of events;
- 28.1.6 NOT USED
- 28.1.7 any other insurances set out in the Order
- 28.1.8 any other insurance which the Sub-Contractor may be statutorily required to maintain
- 28.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing, appropriately regulated and of good repute in the international insurance market.
- 28.3 Where the Sub-Contractor is required to take out and maintain professional indemnity insurance, the Sub-Contractor shall maintain such insurance for such amount during the Services and thereafter for a period of not less than twelve (12) years from the date of Date of completion of the Services, provided always that such insurance is generally available in the market on commercially reasonable rates and terms. For the avoidance of doubt, any increase in the premium cost resulting from the Sub-Contractor's claims history under a policy or similar policy shall be regarded as commercially reasonable.
- 28.4 As and when reasonably required to do so, the Sub-Contractor shall provide the Client with documentary evidence (in a form satisfactory to the Client acting reasonably) that the insurances required under this Clause 29 are in force and being maintained and that the premiums payable under them have been paid or are in the process of being paid to insurers.
- 28.5 The Sub-Contractor shall not (and the Sub-Contractor shall procure that none of its Sub-Sub-Contractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 28.6 Where any Required Insurance is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Sub-Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Sub-Contractor shall not be entitled to recover from the Client any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Sub-Contract or otherwise.

29. CONTRACT MANAGERS

29.1 In addition to each Party's respective relationship managers set out in Clause 30.4, for each Order:

- 29.1.1 The Client may appoint the person whose name, address and telephone number are set out in the Order as the Client's Contract Manager to act as the Client's representative generally in connection with this Sub-Contract.
- 29.1.2 The Sub-Contractor may appoint the person whose name, address and telephone number are set out in the Order) as the Sub-Contractor's Contract Manager to act the Sub-Contractor's representative generally in connection with this Sub-Contract.

29.2 Where the Order do not specify a Contract Manager, the relevant party's relationship manager shall be deemed to be the Contract Manager for any provision which relies upon one being appointed.

30. NOTICES

30.1 Any notice or other communication given to a party under or in connection with this Sub-Contract ("**Notice**") shall be in writing and shall be:

- 30.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
- 30.1.2 addressed to the Client's / the Sub-Contractor's respective Contract Manager (as relevant) shown in the Order, or such other address as either party may from time to time notify to the other in writing.

30.2 Any Notice shall be deemed to have been received:

- 30.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 30.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second day after posting; or
- 30.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 31.2.3, **business hours** means 9.00 am to 5.00 pm Monday to Friday on a Day that is not a public holiday in the place of receipt.

30.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

30.4 The Parties' respective representatives for relationship management and Sub-Contract governance shall be:

For the Client [populate details]

For the Sub-Contractor [populate details]

31. ASSIGNMENT

31.1 Neither party may transfer, sell, assign, transfer or novate any of its rights, benefits or obligations under this Sub-Contract to any other person unless it has first obtained the prior written consent of the other Party to do so.

32. SUSPENSION

32.1 The Client may suspend the Sub-Contractor's Services by written notice. If the Sub-Contractor's employment is suspended by the Client other than for the Sub-Contractor's breach, the Sub-Contractor will be paid (in addition to any amount which shall have become payable under Clause 21 Payment) a fair and reasonable amount for any abortive work for which the Sub-Contractor would not otherwise be remunerated.

32.2 Upon any suspension the Sub-Contractor shall take immediate steps to bring the performance of the Services to a halt in a safe and orderly manner but with all reasonable speed and economy (including advising and assisting the Client in relation the protection and preservation of the Services) and shall also relinquish any lien upon and deliver to the Client within seven (7) days of such suspension any and all drawings, reports, specifications, bills of quantities, calculations, correspondence, minutes of meetings, records and/or any other documents or data of any kind in its possession, custody or control relating to the Services.

33. TERMINATION

33.1 Without prejudice to any other rights of the Client, the Client may terminate this Sub-Contract or an Order, in whole or in part, at any time by giving five (5) Days' written notice to the Sub-Contractor if the Sub-Contractor:

- 33.1.1 suspends performance of the Services (other than pursuant to the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009)
- 33.1.2 fails to carry out the Services in accordance with the Sub-Contract, including compliance with the Client's instructions;
- 33.1.3 fails to proceed regularly and diligently with the Services; or
- 33.1.4 is in material breach of its obligations under this Sub-Contract and (if such breach is remediable) fails, within five (5) Days' of notice of such breach from the Client, to remedy such breach or take reasonable steps to rectify the breach;
- 33.1.5 refuses or persistently neglects, after notice in writing from the Client, to remove repair or reinstate (as the Client shall require) defective work or materials; or
- 33.1.6 does or omits to do any act or thing which would or might occasion or give rise to forfeiture or termination of the Prime Contract or the Client's employment thereunder; or
- 33.1.7 commits any of the acts referred to in Paragraph 7 (*Corrupt Gifts and Payments*) of Schedule 1 (*Mandatory Flowdown Provisions*); or
- 33.1.8 is acquired by or merged with any third party or any change of control of the Supplier occurs;
- 33.1.9 fails to comply with the provisions of the Mandatory Policies; or
- 33.1.10 where the Prime Contract is terminated for any reason, other than pursuant to Clause 33.5.

33.2 Either party may terminate the Sub-Contract with immediate effect if the other party ceases to carry on business or is declared bankrupt or, if it is a company, goes into liquidation (except for the purpose of solvent amalgamation or reconstruction), administration, receivership, becomes subject to a moratorium under Part A1 of the Insolvency Act 1986 or a restructuring plan under Part 26A Companies Act 2006, or otherwise becomes insolvent.

33.3 In the event of the termination of the Sub-Contract pursuant to Clauses 33.1 or 33.2, the Client shall pay to the Sub-Contractor any payments which are due to the Sub-Contractor for the Services properly executed (including, where relevant, any design work properly carried out) up to the date of termination, less:

- 33.3.1 any amounts previously paid to the Sub-Contractor any other sums which are properly due to the Sub-Contractor in accordance with this Sub-Contract at the date of termination;
- 33.3.2 the reasonable and substantiated costs and expenses incurred and/or to be incurred by the Client in carrying out a tender process, including requesting tenders from any parties interested in entering into a new contract to provide Services that are equivalent to any part (or the whole) of the Services, evaluating the responses from those interested parties and entering into a new contract (or contracts) with any new contractor(s);

- 33.3.3 the reasonable and proper costs incurred by the Client in performing any rectification work and/or ensuring that the Services are performed; and
- 33.3.4 any other costs, expenses, losses or damage incurred and/or to be incurred by the Client as a result of termination of this Sub-Contract.
- 33.4 The Sub-Contractor shall not be entitled to any payment or reimbursement of any loss of profit or any other costs, losses or expenses arising out of or in connection with this Sub-Contract.
- 33.5 If the Client's employment under the Prime Contract is terminated by the Authority on either a voluntary basis by the Authority or as a result of the Authority's own default, then the employment of the Sub-Contractor under this Sub-Contract shall thereupon also terminate automatically and with immediate effect and Clause 33.7 shall apply.
- 33.6 Without affecting any other right or remedy available to it, the Sub-Contractor may terminate this Sub-Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Sub-Contract on the due date for payment and remains in default not less than 60 working days after being notified in writing to make such payment.
- 33.7 If the Sub-Contractor terminates its employment in accordance with Clause 33.6, then the Sub-Contractor shall be entitled to be paid:-
- 33.7.1 the value of the Services completed at the date of such termination;
- 33.7.2 the value of any work begun and executed but not completed at the date of such termination;
- 33.7.3 the value of any unfixed materials and goods reasonably and properly but not prematurely delivered to Sites for use in the Services
- 33.7.4 and in circumstances where this Sub-Contract has been terminated pursuant to Clause 33.5 (and without double counting) any commitments, liabilities or expenditure which were reasonably and properly incurred by the Sub-Contractor on the basis that this Sub-Contract would have been continuing, but only to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Sub-Contractor by reason of the determination of this Sub-Contract and only to the extent that:
- (a) such commitments liabilities or expenditure is in relation to:
- (i) existing contracts, such commitments, liabilities or expenditure are incurred under arrangements and/or contracts that are consistent with terms that have been entered into in the ordinary **course** of business and on reasonable commercial terms; or
- (ii) where the Sub-Contractor has been put on notice that the Authority is considering exercising its right to voluntarily terminate the Prime Contract, the Sub-Contractor has notified the Client of any material commitments, liabilities or expenditure it proposes to enter into and requested the Client's consent in advance of entering into or incurring (as applicable) them and either the Client has given its consent (such consent not to be unreasonably withheld and to be given or denied within twenty (20) Days of such request) or has failed to respond within such twenty (20) Day period; and
- (b) the Sub-Contractor has used its reasonable endeavours to minimise and mitigate such commitments, liabilities and expenditure.
- The Sub-Contractor shall provide any information reasonably available and reasonably requested by the Client in order to verify the Sub-Contractor's commitments, liabilities or expenditure in relation to this Clause 33.7.4.
- 33.8 Without prejudice to any other provision of this Sub-Contract and without limiting Clause 33.5, the Client may:
- 33.8.1 upon three (3) months' prior written notice terminate the Sub-Contractor's employment under this Sub-Contract or an Order, in whole or in part, or

33.8.2 upon five (5) Days' prior written notice omit part of the Services for any reason.

Following such termination, the Sub-Contractor's rights shall be the same as that if termination had taken place pursuant to Clause 33.7.

33.9 Termination or expiry of this Sub-Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Sub-Contract which existed at or before the date of termination or expiry.

33.10 The expiry or termination of this Sub-Contract shall be without prejudice to the continuing rights and obligations of the parties under any provision of this Sub-Contract which are expressed to survive termination or expiry or which do not form part of the Services which are the subject of the termination or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.

34. **DISPUTE RESOLUTION PROCEDURE**

34.1 Without prejudice to Clause 38 if either the Client or the Sub-Contractor disagrees with any action of the other which could result in a dispute or difference arising between them, the parties agree first to try in good faith to settle the disagreement by negotiation before invoking adjudication or any other dispute resolution procedure.

34.2 The Parties agree that any dispute arising out of or in connection with the Sub-Contract, including any question regarding its existence, validity or termination, and any dispute relating to any non-contractual obligations arising out of or in connection with the Sub-Contract, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat or legal place of arbitration shall be London. The language to be used in the arbitration shall be English.

34.3 Before any dispute under or in connection with this Sub-Contract is referred to arbitration the Parties shall meet on a without prejudice basis or alternatively seek to resolve their differences by mediation. The parties agree that the arbitrator may stay proceedings to allow negotiations or mediation to take place and that if (contrary to the requirements of this clause) proceedings are issued, then proceedings shall be stayed on the application of either party to allow the Parties to meet on a without prejudice basis or mediate, except in exceptional circumstances where urgent steps are necessary to preserve the interests of one or other of the Parties

34.4 Where the Housing Grants Construction and Regeneration Act 1996 (as amended) applies to this Sub-Contract, the parties may, at any time, refer any dispute to adjudication which shall be carried out in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998, SI 1998/649 (as amended) and the adjudicator shall on the application of the party who is referring the dispute or difference, be an individual to be nominated by the Nominating Body.

34.5 If a dispute or difference arises under this Sub-Contract that either Party wishes to refer to adjudication, Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 ('the Scheme') shall apply, subject to the following:

34.5.1 for the purposes of the Scheme, the Adjudicator shall be nominated by the Royal Institute of Chartered Surveyors or such other body as the Client shall decide acting reasonably;

34.5.2 where the dispute or difference is or includes a dispute or difference relating to the opening up of any Works and as to whether an instruction to do so is reasonable in all the circumstances:

(a) the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;

(b) if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether the instruction is reasonable in all the circumstances;

34.5.3 the Adjudicator shall give reasons for his decision and shall deliver his decision to the Parties as soon as practicable and within 2 (two) Business Days of making his decision.

34.5.4 the Adjudicator shall notify the Parties as soon as practicable, if he becomes aware that he has any interest in the Works, the subject matter of the adjudication, or the parties.

34.6 The Sub-Contractor shall give all assistance as may be required by the Client in relation to any Related Dispute or any dispute the Client may have with the Authority under the Prime Contract that arises out of or is connected to the Works.

34.7 If a dispute under or in connection with this Sub-Contract ("**Sub-Contract Dispute**") raises issues which are substantially the same as or are connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the Sub-Contract Dispute shall be referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator shall become the Adjudicator.

35. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

35.1 Save as otherwise expressly provided herein, the parties do not intend any third party to have the right to enforce any provision of this Sub-Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

36. **COUNTERPARTS**

36.1 This Sub-Contract may be executed in a number of counterparts, which shall each constitute an original and together constitute one agreement. If this Sub-Contract is executed in counterpart, it shall not be effective unless each party has executed at least one counterpart.

37. **LAW AND JURISDICTION**

37.1 This Sub-Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be construed in accordance with English law and in so far as any matter arising out of this Sub-Contract is required to be referred to a Court of Law the Courts of England and Wales shall have exclusive jurisdiction (save that proceedings may be brought in the courts of other jurisdictions in order to enforce any decision of the Courts of England and Wales).

38. **SEVERANCE**

38.1 If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected or impaired thereby.

39. **WAIVER**

39.1 Failure by either party at any time to enforce any provision of this Agreement against the other shall not be construed as a waiver of such entitlement and shall not affect the validity of this Agreement or any part or parts hereof or the right of the relevant party to enforce any provision in accordance with its terms. The rights and/or remedies of either party may only be waived by formal written waiver which is signed by a duly authorised representative of the party waiving its rights and which makes express and unequivocal reference to the waiver being made pursuant to this Clause 39.

SCHEDULE 1 – MANDATORY FLOWDOWN PROVISIONS**1. Observance of Mandatory Flowdown Provisions**

- 1.1. The Sub-Contractor acknowledges that the Authority requires the incorporation of certain mandatory flowdown provisions of the Prime Contract into any sub-contracts entered into by the Client in accordance with the terms of the Prime Contract, and accordingly, the Mandatory Flowdown Provisions set out in this Schedule 1 are incorporated into this Sub-Contract.
- 1.2. The Sub-Contractor acknowledges that any breach by the Sub-Contractor of this Sub-Contract may result in the Client being in breach of and incurring liability under the Prime Contract and all such liability is hereby agreed to be included as being within the contemplation of the parties.
- 1.3. The Sub-Contractor shall ensure that all Sub-Sub-Contracts that it enters into contain similar provisions to those set out in this Schedule 1 (Mandatory Flowdown Provisions), provided that if the Sub-Contractor is unable to comply with this Paragraph 1.3 having used all reasonable endeavours to do so, it shall notify the Client and the Parties shall discuss what course of action to take with a view to meeting the obligations of this Paragraph 1.3 as nearly as possible.

2. Standards of Conduct and Required Consents**2.1. Observance of applicable Law and Regulations**

- 2.1.1. The Sub-Contractor shall ensure that the Services and all operations or activities carried out by the Sub-Contractor and Sub-Contractor Personnel pursuant to this Sub-Contract shall be conducted in accordance, and comply at all times, with:
 - (a) all applicable Law; and
 - (b) each other instrument or code of practice whether or not having the force of law that applies or relates to the Services, including any Authority policy or guidance (each a Regulation) or Client policy.
- 2.1.2. Should there be any conflict or inconsistency between any of the Regulations, the Sub-Contractor shall comply and ensure the compliance by the relevant Sub-Contractor Personnel with the provision of the Regulation which requires the higher standard of performance save where this would be in breach of the applicable Law, in which case the requirements of the applicable Law shall prevail.
- 2.1.3. The Sub-Contractor shall include in its contracts with its Sub-Sub-Contractors provisions equivalent to those set out in Paragraph 2.1.1 and 2.1.2, and shall enforce such provisions should any Sub-Sub-Contractor be in breach thereof.

2.2. Required Consents

- 2.2.1. The Sub-Contractor shall:
 - 2.2.1.1. identify, obtain, maintain and comply with all Required Consents (other than Authority Consents or Client Consents), where necessary entering into of any legal agreements necessary for the grant of such Required Consents;
 - 2.2.1.2. use all reasonable endeavours to:
 - (a) assist the Client to obtain, maintain, implement and comply with all Required Consents that, as a matter of Law or policy, only the Client is eligible to obtain (the “**Client Consents**”);

- (b) where requested by the Client, assist the Authority to obtain, maintain, implement and comply with all Required Consents that, as a matter of Law or policy, only the Authority is eligible to obtain (the “**Authority Consents**”);
- 2.2.1.3. be responsible for implementing each Required Consent within the period of its validity in accordance with its terms and relevant Law save for those Required Consents which only the Authority and/or the Client can implement as a matter of Law or policy;
- 2.2.1.4. other than in respect of Authority Consents or the Client Consents, provide free of charge, to the Client’s Contract Manager a copy of any application for a Required Consent (with a copy of all accompanying drawings and other documents) and a copy of any Required Consents obtained and any associated legal agreement;
- 2.2.1.5. comply with the conditions attached to any Required Consent and the terms of any associated legal agreement;
- 2.2.1.6. procure that no Required Consent or associated legal agreement is breached by it or any Sub-Contractor or Sub-Sub-Contractor; and
- 2.2.1.7. preserve each Required Consent and procure that:
 - (a) each Required Consent is not revoked or quashed due to any act or omission of any Sub-Contractor or Sub-Sub-Contractor; and
 - (b) (to the extent within the Sub-Contractor's control) all Required Consents continue in full force and effect for such time as is necessary for the Sub-Contractor to carry out its obligations under this Sub-Contract,

and for the purposes of this Paragraph 2.2, the Sub-Contractor shall be deemed to have complied with its obligations to obtain or implement Required Consents to the extent that it has obtained or implemented the relevant Required Consents pursuant to any other agreement or arrangement between the Parties.
- 2.2.2. The Sub-Contractor shall not (and shall use all reasonable endeavours to procure that no Sub-Contractor Or Sub-Sub-Contractor shall) without the prior consent of the Client’s Contract Manager (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Required Consent (whether obtained before or after the Effective Date) or of any condition attached to it. Subject to the compliance by the Sub-Contractor with its obligations under this Paragraph 2.2, references in this Sub-Contract to Required Consents shall be construed as referring to the Required Consents as from time to time varied, relaxed or waived.

3. **Access and Facilities to be provided by the Sub-Contractor**

- 3.1. The Sub-Contractor's progress and quality standards in providing the Services shall be monitored by the Authority and/or the Client. The Sub-Contractor shall provide to the Authority and/or the Client's representatives relevant accommodation/ facilities, at no direct cost to the Authority or the Client, and all reasonable access to its premises for monitoring the Sub-Contractor's progress and quality standards in performing the Sub-Contract.
- 3.2. Any accommodation provided pursuant to Paragraph 3.1 shall be adequately furnished, lit, heated and ventilated and shall include suitable cloakroom and communication facilities for the use by representatives of the Authority and/or the Client.
- 3.3. The Sub-Contractor shall use reasonable endeavours to ensure that the provisions equivalent to those in Paragraph 3.1 are included in those of its key Sub-Sub-Contracts as are identified by the Client so that representatives of the Authority or the Client may have access to and be provided with access and facilities at premises of key Sub-Sub-Contractors that are being used in connection with providing the Services. Access to such key Sub-Sub-Contractors' premises shall be arranged by the Authority or the Client through the Sub-Contractor.

4. Security

4.1. The Sub-Contractor shall:

- (a) The Sub-Contractor shall operate within all required security procedures, including any requirements of the Client as may be notified to it from time to time.
- (b) take all reasonable steps to ensure that all Sub-Contractor Security Personnel engaged on any work in connection with this Sub-Contract have notice that the Official Secrets Act 1911-1989 apply to them and will continue so to apply after the completion or termination of this Sub-Contract; and
- (c) if directed by the Client or the Authority, ensure that any Sub-Contractor Security Personnel shall sign a statement acknowledging that, both during the term of this Sub-Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable, any other applicable Law).
- (d) comply with the Security Aspects Letter in its performance of this Sub-Contract
- (e) Report any breach of security (including but not limited to: site, personnel, information, data, vehicle, asset) by Sub-Contractor personnel or Sub-Sub-Contractor, following identification as soon as possible, but no later than one (1) Day

4.2. *Breach of Security*

The Client shall be entitled to terminate this Sub-Contract immediately if:

- (a) the Sub-Contractor or any Sub-Contractor Personnel has committed a breach of or failed to comply with any of the foregoing provisions of this Paragraph 4; or
- (b) the Sub-Contractor or any Sub-Contractor Personnel has committed a breach of any obligations in relation to secrecy or security imposed upon it by any contract with the Authority, or with any department or person acting on behalf of His Majesty,

(together a “**Breach of Security**”) and the Authority has confirmed to the Client that it considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter. In addition the Client may claim such damages as may have been sustained as a result of the Sub-Contractor's breach of this Paragraph.

- 4.3. A decision of the Client to serve a Termination Notice in respect of Paragraph 4.2 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Client's decision is based. However, to the extent permitted by applicable Law and the Client's security policies, the Client shall provide reasonable details of the event or considerations upon which the Client's decision is based.

4.4. *Return or Destruction of Classified Documents*

On expiry or termination of this Sub-Contract, the Sub-Contractor shall, as advised by the Client, return or destroy all copies of classified documents (including drawings) issued to the Sub-Contractor by the Client or the Authority pursuant to (or for the purposes of the execution of) this Sub-Contract and certify that this has been done, unless written approval has been given for their retention.

4.5. *Official-Sensitive Security Requirements*

- (a) The Sub-Contractor shall protect all Information relating to the aspects designated as OFFICIAL-SENSITIVE as identified in the Security Aspects Letter, in accordance with the official security conditions contained in this Sub-Contract or the Security Aspects Letter.
- (b) The Sub-Contractor shall include the requirements and obligations set out in Paragraph (a) in any Sub-Sub-Contract placed in connection with or for the purposes of this Sub-Contract which requires disclosure of OFFICIAL-

SENSITIVE Information to the Sub-Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Sub-Contractor. The Sub-Contractor shall also include in the Sub-Sub-Contract a requirement for the Sub-Sub-Contractor to flow the requirements of this Paragraph to its further sub-contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

- (c) In this condition "**Information**" means information recorded in any form disclosed or created in connection with the Sub-Contract.

5. Equality

- 5.1. The Sub-Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 5.2. Without prejudice to the generality of the obligation in Paragraph 5.1, the Sub-Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Sub-Contract is being performed.
- 5.3. The Sub-Contractor agrees to secure the observance of the provisions of this Paragraph 5 by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Sub-Contract.
- 5.4. The Sub-Contractor agrees to reflect this Paragraph 5 in any Sub-Sub-Contract that it enters into to satisfy the requirements of this Sub-Contract and to require its Sub-Sub-Contractors to reflect this Paragraph in their Sub-Sub-Contracts that they enter into to satisfy the requirements of this Sub-Contract.

6. Cyber

6.1. *The Client's Obligations*

The Client shall notify the Sub-Contractor of the relevant Cyber Risk Level and the appropriate Cyber Security Instructions to the Sub-Contractor (or any reassessment by the Authority of the Cyber Risk Level) as soon as reasonably practicable following receipt of notification from the Authority.

6.2. *Sub-Contractor Obligations*

Subject to Paragraph 6.3, (Cyber Security Implementation Plan), the Sub-Contractor shall, and shall procure that its Sub-Sub-Contractors shall:

- (a) comply with DEF STAN 05-138;
- (b) complete the CSM Risk Assessment Process in accordance with the Client's instructions and any other reasonable supply chain strategy requirements of which it is notified by the Client, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-Sub-Contractor, and complete a further CSM Risk Assessment Process or CSM Supplier Assurance Questionnaire where a change is proposed to the Sub-Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Sub-Contract or on receipt of any reasonable request by the Client;
- (c) carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Sub-Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;
- (d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Paragraph 6 in accordance with Good Industry Practice provided always that where there is a conflict between the Sub-Contractor's obligations under sub-paragraph (c) above and this sub-paragraph (d) the Sub-Contractor shall notify the Client in accordance with the notification provisions in DEF STAN 05-138 as soon as it becomes aware of the conflict and the Client shall determine which standard or measure shall take precedence;

- (e) comply with all obligations imposed under the Cyber Security Implementation Plan in accordance with the timescales set out therein;
- (f) comply with all Cyber Security Instructions notified to it by the Client as soon as reasonably practicable;
- (g) notify the Client and the MOD Defence Industry Warning, Advice and Reporting Point, within the Joint Security Coordination Centre (or any successor body notified by way of ISN) in accordance with ISN 2014/02 as amended or updated from time to time and the Sub-Contractor's NSA/DSA, and in the case of a Sub-Sub-Contractor also notify the Sub-Contractor, 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;
- (h) in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority, the Client and each of their 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 Sub-Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Level;
- (i) consent to the Authority and the Client recording and using information obtained in relation to the Sub-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 Sub-Contractor and / or Sub-Sub-Contractor as appropriate; and
- (j) include provisions in all Sub-Sub-Contracts imposing provisions equivalent to this Paragraph 6 (Cyber) (the **"Equivalent Provisions"**) and, where a Sub-Sub-Contractor breaches terms implementing this Paragraph in a Sub-Sub-Contract, the Sub-Contractor shall, and shall procure that its Sub-Sub-Contractors shall, in exercising their rights or remedies under the relevant Sub-Sub-Contract:
 - (i) immediately notify the Client of any such breach and consult with the Client regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Client's views into consideration; and
 - (ii) have regard to the Equivalent Provisions.

6.3. *Cyber Security Implementation Plan*

- (a) In the event of a conflict in or between the provisions of the Cyber Security Implementation Plan and the obligations set out at Paragraph 6.2 (Sub-Contractor Obligations) above then, without prejudice to the generality of Paragraph 6.2, (Sub-Contractor Obligations), the provisions of the Cyber Security Implementation Plan shall prevail and Paragraph 6.2 (Sub-Contractor Obligations) shall be deemed to be amended to the minimum extent necessary to eliminate such conflict.
- (b) Where:
 - (i) the Sub-Contractor has notified the Authority or the Client that it or one or more of its Sub-Sub-Contractors cannot comply with any of sub-paragraphs 6.2 (a) to (j) above, or
 - (ii) the Authority or the Client has notified the Sub-Contractor that the Sub-Contractors' response to a CSM Supplier Assurance Questionnaire has revealed a failure of the Sub-Contractor or one or more of its Sub-Sub-Contractors to comply with sub-paragraph 5.2 (a) to (j) above,
 - (iii) the Sub-Contractor shall prepare and deliver to the Client for review and comment as soon as practicable (and in any event within three (3) Days of such notification) an updated Cyber Security Implementation Plan describing its proposed methodologies for rectifying said Sub-Sub-Contractor's non-compliance (an **"Updated Cyber Plan"**).

- (c) After the delivery of the Updated Cyber Plan, the Client shall submit the Updated Cyber Plan to the Authority and shall procure that the Authority will either approve the revised Updated Cyber Plan, or provide the Sub-Contractor with written comments. The Sub-Contractor shall give due consideration to the Authority's comments and shall provide a revised Updated Cyber Plan to the Authority within three (3) Days of receiving the Authority's comments. the Client shall procure that the Authority shall either approve the revised Updated Cyber Plan, or provide further written comments in which case the process set out in this Paragraph shall be repeated until the Authority approves the Updated Cyber Plan.
- (d) Where the Authority has approved an Updated Cyber Plan, this shall supersede all previous Cyber Security Implementation Plans and the Sub-Contractor shall, and shall procure that its Sub-Sub-Contractors shall, comply with such Updated Cyber Plan until implementation is agreed to have been achieved whereupon sub-paragraphs 6.2 (a) to (j) above shall apply in full. In the event that no Updated Cyber Plan has been approved by the Client within twenty (20) Days of the Sub-Contractor's initial notification, the provisions of Paragraph 34 (*Dispute Resolution Procedure*) shall apply.

6.4. *Management of Sub-Sub-Contractors*

- (a) Where the Sub-Contractor becomes aware that a Sub-Sub-Contractor is not complying with its obligations, the Sub-Contractor shall immediately notify the Client and provide full details of the Sub-Sub-Contractor's non-compliance as soon as reasonably practicable and shall consult with the Client as to the appropriate course of action which may include the agreement of a remedial plan or termination of the Sub-Sub-Contract having regard to Paragraph 6.2 (j) and without prejudice to the Authority's step-in rights under the Prime Contract.
- (b) Having regard to the Client's views, the Sub-Contractor shall take all reasonable measures to address any non-compliance of the Sub-Contractor or a Sub-Sub-Contractor within the reasonable timescales required by the Client. Where the Sub-Contractor fails to do so, this shall amount to a breach of this Paragraph 6 and the provisions of Paragraph 6.7 (Breach of Obligations) as appropriate shall apply.

6.5. *Records*

- (a) Without prejudice to the Sub-Contractor's obligations under this Sub-Contract in relation to reporting and Paragraph 4 (*Security*), the Sub-Contractor shall keep and maintain, and shall ensure that any Sub-Sub-Contractor shall keep and maintain, until six (6) years after termination or expiry of this Sub-Contract, or as long a period as may be agreed between the Parties, full and accurate records including:
 - (i) details of all Authority Identifiable Information relating to the Sub-Contractor Deliverables provided under this Sub-Contract; and
 - (ii) copies of all documents required to demonstrate compliance with DEF STAN 05-138 and this Paragraph 6, including 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 Sub-Contractor and/or Sub-Sub-Contractor.
- (b) The Sub-Contractor shall, and shall ensure that any Sub-Sub-Contractor shall on request provide the Authority, the Authority's representatives, and/or the Sub-Contractor's NSA/DSA such access to those records as may be required in connection with this Sub-Contract.

6.6. *Audit*

- (a) Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Sub-Contractor agrees, and shall procure that its Sub-Sub-Contractors agree, that the Authority and/or the Client and each of their representatives, in coordination with the Sub-Contractor's NSA/DSA or the NSA/DSA on behalf of the Authority and/or the Client, may conduct such audits as it considers in its absolute opinion necessary, that the Authority and the Client, their representatives and/or the Sub-Contractor's NSA/DSA may, not more than three times in any calendar year and for a period of six (6) years following the termination or expiry of this Sub-Contract, whichever is the later, conduct an audit for the following purposes:
 - (i) to review and verify the integrity, confidentiality and security of any Authority Identifiable Information;

- (ii) to review the Sub-Contractor's and/or any Sub-Sub-Contractor's compliance with its obligations under this Paragraph 6; and
 - (iii) to review any records created during the provision of the Sub-Contractor Deliverables, including any documents, reports and minutes which refer or relate to the Sub-Contractor Deliverables for the purposes of sub-paragraphs (a)(i) and (a)(ii) above.
- (b) The Client shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Sub-Contractor and/or Sub-Sub-Contractor's provision of the Services or delay the provision of the Sub-Contractor Deliverables and supplier information received by the Client in connection with the audit shall be treated as Confidential Information.
- (c) The Sub-Contractor shall, and shall ensure that any Sub-Sub-Contractor shall on demand provide the Authority, the Client and any relevant regulatory body, including the Sub-Contractor'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:
 - (i) all information requested by the Authority and/or the Client within the permitted scope of the audit;
 - (ii) reasonable access to any Sites controlled by the Sub-Contractor, any Sub-Contractor Or Sub-Sub-Contractor and any Sub-Sub-Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Sub-Contract and, where such Sites and/or equipment are outside the control of the Sub-Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
 - (iii) access to any relevant staff.
- (d) The Client shall endeavour to (but is not obliged to) provide at least ten (10) Days' Notice of its intention to conduct an audit.
- (e) The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 6, unless the audit identifies a material breach of the terms of this Paragraph 6 by the Sub-Contractor and/or Sub-Sub-Contractor in which case the Sub-Contractor shall reimburse the Authority and/or the Client for all of their respective reasonable costs incurred in the course of the audit.

6.7. *Breach of Obligations*

- (a) Where the Cyber Risk Level of this Sub-Contract is assessed to be a moderate or high, and the Sub-Contractor breaches any of the terms of this Paragraph 6, the Client shall be entitled:
 - (i) to terminate the Sub-Contract (whether in whole or in part) in accordance with Clause 33.1.4 and to claim damages as though such breach is a material breach; and
 - (ii) where the Sub-Contract has not been terminated, to recover from the Sub-Contractor any loss sustained in consequence of any breach of this Paragraph 6.
- (b) Where the Cyber Risk Level of this Sub-Contract is assessed to be very low or low, and the Sub-Contractor breaches the terms of this Clause 6, the Client shall be entitled:
 - (i) to recover from the Sub-Contractor the amount of any loss sustained in consequence of any breach of this Clause 6, subject to any provision which is agreed elsewhere in this Sub-Contract; and
 - (ii) where the Sub-Contractor does not comply with any reasonable instructions issued by the Client or the Sub-Contractor's NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Client shall be entitled to terminate this Sub-Contract (whether in whole or in part) and to claim damages as though such breach is a material breach.

- (c) Where the Sub-Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Paragraph 6 the Client shall be entitled to terminate this Sub-Contract (whether in whole or in part) in accordance with Clause 33.1.4 and to claim damages as though such breach is a material breach.

6.8. General

- (a) On termination or expiry of this Sub-Contract the provisions of this Paragraph excepting Paragraph 6.2 (b) and 6.2 (c) above shall continue in force so long as the Sub-Contractor and/or and Sub-Sub-Contractor holds any Authority Identifiable Information relating to this Sub-Contract.
- (b) Termination or expiry of this Sub-Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this paragraph that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Sub-Contract which existed at or before the date of termination or expiry.
 - (i) The Sub-Contractor agrees that the Authority has absolute discretion to determine changes to DEF STAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEF STAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the prices payable under this Sub-Contract for any associated increase or decrease in costs and the Sub-Contractor may request an extension of time for compliance with such revised or amended DEF STAN 05-138 or Cyber Risk Level in accordance with Clause 8 (*Early Warning and Change Procedure*), provided always that the Sub-Contractor 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 Sub-Contract and reasonable in all the circumstances.
 - (ii) Subject to sub-clause (b)(i), where the Sub-Contractor seeks such adjustment or extension, the Client will proceed in accordance with Clause 8 (*Early Warning*) to determine the request for adjustment or extension. The Sub-Contractor must deliver a Sub-Contractor Change Proposal to the Client within six (6) weeks of the occurrence of the change in DEF STAN 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 Client shall not be required to withdraw any the Client notice of change which may have been issued insofar as it relates to DEF STAN 05-138 or the Cyber Risk Level whether or not the Sub-Contractor Change Proposal is rejected. In the event that the Sub-Contractor does not agree with the Client's determination, then the provisions of Clause 34 (*Dispute Resolution Procedure*) shall apply.
- (c) The Sub-Contractor shall not recover any costs and/or other losses under or in connection with this paragraph where such costs and/or other losses are recoverable or have been recovered by the Sub-Contractor elsewhere in this Sub-Contract or otherwise. For the avoidance of doubt this shall include 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 Sub-Contractor is able to or has recovered such sums in any other provision of this Sub-Contractor has recovered such costs and/or losses in other contracts between the Sub-Contractor and the Client.

7. Corrupt Gifts and Payments

7.1. The Sub-Contractor shall not do any of the following:

- (a) offer, give or agree to give to any the Client Personnel or Crown servant any gift or financial or other advantage 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 performance of this Sub-Contract or any other contract with the Crown; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Sub-Contract or any other contract with the Crown;

- (b) enter into this Sub-Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Sub-Contractor, or any Sub-Contractor Or Sub-Sub-Contractor on their behalf, or to their knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Client;
- (c) commit any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under applicable Law creating offences in respect of fraudulent acts;
 - (iii) at common law in respect of fraudulent acts; or
 - (iv) in relation to this Sub-Contract or any other contract with the Client, the Authority or the Crown; or
- (d) defraud or attempt to defraud or conspire to defraud the Client, the Authority or the Crown,

(the circumstances identified in Paragraph 7.1(a) to 7.1(d) above being “**Prohibited Acts**”).

7.2. If the Sub-Contractor, any Sub-Contractor Or Sub-Sub-Contractor or any Sub-Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Client shall be entitled to act in accordance with Paragraph 7.2(a) to (d):

- (a) if a Prohibited Act is committed by the Sub-Contractor, any other Sub-Contractor Or Sub-Sub-Contractor or by an employee not acting independently of the Sub-Contractor, then this shall be treated as a material breach and the Client shall be entitled to terminate this Sub-Contract in its entirety in accordance with (and subject to) Clause 33 (*Termination*)
- (b) if the Prohibited Act is committed by an employee of the Sub-Contractor acting independently of the Sub-Contractor, then this shall be treated as a material breach and the Client shall be entitled to terminate this Sub-Contract in its entirety in accordance with Condition, unless within 20 Days of receipt of a written notice under Clause 33.1.4 the Sub-Contractor terminates (or procures that any other Sub-Contractor Or Sub-Sub-Contractor (as applicable) terminates) the employee's employment;
- (c) if the Prohibited Act is committed by a Sub-Sub-Contractor or by an employee of that Sub-Sub-Contractor not acting independently of that Sub-Sub-Contractor, then this shall be treated as a Material Breach and the Client shall be entitled to terminate this Sub-Contract in its entirety in accordance with Clause 33.1 (*Termination*) unless within 20 Days of receipt of a written notice under Clause 33.1.4 the Sub-Contractor terminates the relevant Sub-Sub-Contract and procures the performance of the relevant part of the Maintenance Services by another person; and
- (d) if the Prohibited Act is committed by an employee of a Sub-Sub-Contractor acting independently of that Sub-Sub-Contractor, then this shall be treated as a Material Breach and the Client shall be entitled to terminate this Sub-Contract in its entirety in accordance with Clause 33.1 (*Termination*), unless within 20 Days of receipt of a written notice under Clause 33.1.4 the Sub-Sub-Contractor terminates the employee's employment.

7.3. Any notice of termination served under Clause 33.1 in relation to a breach of this Paragraph 7 shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Client believes has committed the Prohibited Act; and
- (c) the date on which this Sub-Contract shall terminate, in accordance with the applicable provision of this clause.

7.4. For the avoidance of doubt, upon a termination of this Sub-Contract in accordance with Clause 33.1 for breach of this Paragraph 7, no compensation shall be payable to the Sub-Contractor (but without prejudice to any amounts due to the Sub-Contractor at the Termination Date).

7.5. In exercising its rights or remedies under this Paragraph 7 and Clause 33.1 (*Termination*), the Client shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and
- (b) give all due consideration, where appropriate, to action other than termination of this Sub-Contract, including:
 - (i) requiring the Sub-Contractor to procure the termination of a Sub-Sub-Contract where the Prohibited Act is that of a Sub-Sub-Contractor or anyone acting on its or their behalf; and
 - (ii) requiring the Sub-Contractor to procure the dismissal of an employee (whether its own or that of a Sub-Sub-Contractor or anyone acting on its behalf) where the Prohibited Act is that of such employee.

Recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Sub-Contractor pursuant to this paragraph.

8. Confidentiality and Freedom of Information

8.1. Subject to Paragraph 9 (*Transparency*) and except to the extent set out in this Paragraph 8, each of the Client and the Sub-Contractor agrees, for itself and its respective directors, officers, employees, servants, Sub-Sub-Contractors and agents (and in the case of the Sub-Contractor, each Sub-Contractor Or Sub-Sub-Contractor), to keep confidential and not to disclose to any person any of the other's Confidential Information.

8.2. Notwithstanding Paragraph 8.1 and subject to Paragraph 8.3, the following disclosures of Confidential Information shall be permitted, provided that the relationship to any other Confidential Information is not revealed and in the case of the Client, in so far as it is able to disclose such information:

- (a) any disclosure of Confidential Information that is reasonably required by persons engaged in the performance of their obligations under this Sub-Contract or any other contract between the Parties (or the Client and any Sub-Contractor Or Sub-Sub-Contractor) including disclosure to any professional advisers and insurers to the extent necessary in connection with this Sub-Contract;
- (b) any disclosure of Confidential Information by the Sub-Contractor to a Sub-Sub-Contractor where such Confidential Information is reasonably required by the Sub-Sub-Contractor for the performance of the Sub-Sub-Contractor's obligations under the Sub-Sub-Contract;
- (c) any use or disclosure of Confidential Information to the extent either party has the right to use or disclose that Confidential Information in accordance with any other provision of this Sub-Contract;
- (d) any matter which the Client or the Sub-Contractor can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Sub-Contract;
- (e) any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
- (f) any disclosure which is required by any law (including any order of a court of competent jurisdiction), any parliamentary obligation or the rules of any relevant stock exchange or governmental or regulatory authority having the force of law;
- (g) any disclosure of Confidential Information which is already in the possession of the receiving Party and is not subject to obligations of confidentiality, prior to its disclosure by the disclosing Party;
- (h) any disclosure as may reasonably be required:
 - (i) by the Client of any Sub-Contractor Confidential Information to any person conducting an Office of Government Commerce gateway review;
 - (ii) by any Party of Confidential Information of the other Party to any other consultant engaged by that Party in connection with this Sub-Contract; and

- (i) any disclosure of Confidential Information, that was received without restriction or further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure;
 - (j) any disclosure of Confidential Information any Party can show from their records that the same information was derived independently of that received under or in connection with this Sub-Contract;
 - (k) any disclosure of Sub-Contractor Confidential Information by the Client to the Authority or any other department, office or agency of HM Government for any UK Government purpose;
 - (l) any disclosure by the Client of any document related to this Sub-Contract to which it is a Party and which the Sub-Contractor (acting reasonably) has agreed with the Client contains no Sub-Contractor Confidential Information;
 - (m) any disclosure for the purpose of:
 - (i) the examination and certification of the Client's or the Sub-Contractor's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;
 - (n) any disclosure of Sub-Contractor Confidential Information by the Client or the Authority:
 - (i) to any person in connection with the preparation and analysis by that person of a review;
 - (ii) to any contractor of the Authority in relation to a step-in by the Authority under the Prime Contract;
 - (iii) to any proposed potential replacement service provider(s) or parties interested in performing or nominated to provide the Services as defined in the Prime Contract and such party's advisers for the purposes of selecting and appointing such replacement contractor and otherwise for the purposes of exit in accordance with paragraph 65 (Exit Strategy) of the Prime Contract (subject to the restrictions set out in that paragraph of the Prime Contract; and
 - (o) subsequent use by the recipient as may be required for such purposes.
- 8.3. Where disclosure is permitted under Paragraph 8.2, other than Clause 8.2(d), (f), (g), (i), (j), (l), and (m)(i), the relevant Party shall procure that the recipient of the information shall be subject substantially to the same obligation of confidentiality as that contained in this Paragraph 8.3 and will (in the case of recipients other than other Crown servants, departments, offices or agencies of HM Government) if necessary to achieve this obligation sign a confidentiality agreement containing at least equivalent provisions to those contained in this Paragraph 8.
- 8.4. The Sub-Contractor acknowledges that, for the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Sub-Contractor and any Sub-Sub-Contractor and may require the Sub-Contractor and any Sub-Sub-Contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Sub-Contractor is not a function exercisable under this Sub-Contract.
- 8.5. The Parties acknowledge that the National Audit Office has the right to publish details of this Sub-Contract (including Confidential Information) in its relevant reports to Parliament.
- 8.6. Paragraph 8.3 shall not prevent the Authority or any other department, office or agency of HM Government from using or disclosing any information about this Sub-Contract as necessary to secure improvements in value for money across HM Government and in any reports as necessary to comply with the objectives of the relevant department, office or agency.
- 8.7. The Sub-Contractor shall not and shall procure that no Sub-Contractor Or Sub-Sub-Contractor or Sub-Contractor Personnel will make use of any the Client Confidential Information or Authority Confidential Information otherwise than for the purpose of this Sub-Contract and the Sub-Contractor's performance of its obligations under this Sub-Contract (or

any other contract between the Parties or between the Authority and/or the Client and any Sub-Contractor Or Sub-Sub-Contractor), except with the written consent of the Client or as permitted under Paragraph 8.5.

8.8. The Sub-Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (“**FOI Act**”) and the Environmental Information Regulations and shall assist the Client and the Authority to enable the Authority’s compliance with its FOI Information disclosure requirements.

8.9. The Sub-Contractor acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOI Act 2000 (the “**Code**”), be obliged under the FOI Act, or the Environmental Information Regulations to disclose FOI Information concerning the Sub-Contractor:

- (a) in certain circumstances without consulting with the Sub-Contractor; or
- (b) following consultation with the Sub-Contractor and having taken its views into account,

provided always that where (a) of this Paragraph 8.9 applies the Authority's Representative shall, in accordance with the recommendations of the Code, take reasonable steps, where appropriate to give the Client advanced notice, or failing that, to draw the disclosure to the Client’s attention after any such disclosure and where the disclosure concerns the Sub-Contractor, the Client shall notify the Sub-Contractor of any such advanced notice or disclosure following receipt of the same from the Authority.

8.10. The provisions of this Paragraph 8 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

9. **Transparency**

9.1. *Publication of Transparency Information*

- (a) Notwithstanding any other term of this Sub-Contract, including Paragraph 8 (*Confidentiality and Freedom of Information*), the Sub-Contractor understands that the Authority may publish the Transparency Information to the general public. Where requested by the Client, the Sub-Contractor shall assist and co-operate with the Authority and/or the Client to enable the Authority to publish the Transparency Information.
- (b) Before publishing the Transparency Information to the general public in accordance with Paragraph 9.1(a), the Sub-Contractor acknowledges that the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOI Act or the Environmental Information Regulations, including the Commercially Sensitive Information.
- (c) The Authority and/or the Client shall consult with the Sub-Contractor before the Authority redacts any information from the Transparency Information in accordance with Paragraph 9.1(b). The Sub-Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Environmental Information Regulations.

9.2. *Preservation of Rights*

- (a) Nothing in this Paragraph shall affect the Sub-Contractor's rights at law.

10. **Data Protection**

10.1. The Sub-Contractor shall comply with the Data Protection Legislation in providing the Services. The Sub-Contractor hereby acknowledges and agrees that it shall be acting as a data processor of the Client as defined in the Data Protection Act in respect of any Personal Data processed by the Sub-Contractor on behalf of the Client under this Sub-Contract.

10.2. The Sub-Contractor shall notify the Client without undue delay if it considers that any of the Client’s instructions infringe the Data Protection Legislation. the Client’ will not consider such notification to constitute formal legal advice.

- 10.3. The Sub-Contractor shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any Processing.
- 10.4. The Sub-Contract shall not transfer Personal Data outside of the United Kingdom or European Economic Area, unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
- (a) the Client or the Sub-Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Sub-Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
 - (d) the Sub-Contractor complies with any reasonable instructions notified to it in advance by the Client with respect to the Processing of the Personal Data; and
- 10.5. At the written direction of the Client, the Sub-Contractor shall delete or return Personal Data (and any copies of it) to the Client on termination of the Sub-Contract unless the Sub-Contractor is required by European Union or member state applicable Law (or, from the date the United Kingdom ceases to be a member state of the European Union, the Law of the United Kingdom) to retain the Personal Data.
- 10.6. Subject to Paragraph 10.8, the Sub-Contractor shall notify the Client without undue delay if, in connection with Personal Data Processed under the Sub-Contract, it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other Supervisory Authority;
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by applicable Law; or
 - (f) becomes aware of a Data Loss Event,
 - (g) and the Sub-Contractor shall not respond to any complaint, communication or other request from Data Subjects or a Supervisory Authority or make any notifications to Data Subjects or Supervisory Authorities following a Data Loss Event without the prior written consent of the Client, unless required by applicable Law.
- 10.7. The notification of a Data Loss Event under Paragraph 10.6 (f) shall be notified by the Sub-Contractor to the Client without undue delay and, in any event, within forty-eight (48) hours of the Sub-Contractor becoming aware of the Data Loss Event. Any notification shall include as much detail relating to the Data Loss Event as are available to the Sub-Contractor at the time of notification.
- 10.8. The Sub-Contractor's obligation to notify under Paragraph 10.7 shall include the provision of further information to the Client in phases, as details become available.
- 10.9. Taking into account the nature of the Processing, the Sub-Contractor shall provide the Client with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 10.6 including by promptly providing:
- (a) the Client with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Client following any Data Loss Event; and
- (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office or other Supervisory Authority, or any consultation by the Client with the Information Commissioner's Office or other Supervisory Authority.

The Sub-Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under this paragraph 10.9.

- 10.10. The Sub-Contractor shall allow for audits of its Processing activity by the Client or the Client's designated auditor as required to demonstrate the Client's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the Sub-Contract.
- 10.11. Before allowing any Sub-processor to Process any Personal Data related to the Sub-Contract, the Sub-Contractor must:
- (a) notify the Client in writing of the intended Sub-processor and Processing;
 - (b) obtain the written consent of the Client;
 - (c) enter into a written contract with the Sub-processor which gives effect to the terms set out in this Paragraph 10 (Data Protection) such that they apply to the Sub-processor; and
 - (d) provide the Client with such information regarding the Sub-processor as the Client may reasonably require.
- 10.12. The Sub-Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

11. Sub-Contractor's Personnel at the Naval Base and other Government Establishments

11.1. *Liability in Respect of Damage to Government Property*

Without prejudice to the provisions of Paragraph 12 (GFA), the Sub-Contractor shall make good or, at the option of the Client, indemnify the Client for all damage occurring to any Government property or any Third Party Contractor Property occasioned by the Sub-Contractor, or by any of the Sub-Contractor's Personnel or any Sub-Sub-Contractor, arising from its or their presence on a Government Establishment in connection with this Sub-Contract.

11.2. *Sub-Contractor's Property*

All property of the Sub-Contractor and its Sub-Sub-Contractors and Sub-Contractor Personnel shall be at the risk of the Sub-Contractor whilst it is on any Government Establishment, and the Client shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

- (a) where any such loss or damage was caused or contributed to by any act, neglect or default of any servant or agent of the Client, then the Client shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and/or
- (b) where any property of the Sub-Contractor has been taken on charge by a duly authorised representative of the Client, and a proper receipt has been given therefor, then the Client shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid,

in which circumstances the Client shall make good or, at the option of the Sub-Contractor, pay compensation for any damage to such property.

11.3. *Sub-Contractor Personnel*

- (a) The Sub-Contractor shall submit in writing to the Client for approval, initially and as necessary from time to time, a list of those Sub-Contractor Personnel who are reasonably likely to need to enter a Government Establishment for the purpose of, or in connection with, work under this Sub-Contract, giving such particulars as the Client may require, including full details of birthplace and parentage of any such Sub-Contractor Personnel who:
 - (i) was not born in the United Kingdom; or
 - (ii) if he/she was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.
- (b) The Client shall procure that the Authority will issue clearance passes for those Sub-Contractor Personnel who are approved by it in accordance with Paragraph 11.3(a) for admission to a Government Establishment and Sub-Contractor Personnel shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the Services.
- (c) Notwithstanding the provisions of Paragraph 11.3(a) and (b):
 - (i) if, in the opinion of the Authority or the Client, any representative of the Sub-Contractor shall misconduct itself, or it shall not be in the public interest for any person to be employed or engaged by the Sub-Contractor in relation to this Sub-Contract, the Sub-Contractor shall remove such person without delay on being required to do so and shall cause the Services to be performed by such other person as may be necessary (at no additional cost to the Client).
 - (ii) the Client and/or the Authority shall have the right to refuse access to the Sites to any Sub-Contractor Personnel who, in the opinion of the Client or the Authority is not a fit and proper person to have access to the Sites. The Client shall notify the Sub-Contractor as soon as reasonably practicable if it or the Authority does refuse access to its site.
- (d) The decision of the Client and/or the Authority upon any matter arising under Paragraph 11.3(a) to (c) inclusive shall be final and conclusive.

11.4. *Observance of Site Regulations*

The following provisions apply:

- (a) the Sub-Contractor shall ensure that all Sub-Contractor Personnel have the necessary probity (as conclusively evidenced by the relevant Sub-Contractor Personnel undertaking the HM Government's Baseline Personnel Security Standard (the "**Security Standard**")) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment;
- (b) where the Sub-Contractor requires information on the Security Standard (or security clearance for Sub-Contractor Personnel) or is not in possession of the relevant rules, regulations or requires guidance on them, the Sub-Contractor shall apply in the first instance to the Client Representative who shall submit such application to the Authority Representative;
- (c) on request, the Sub-Contractor shall be able to demonstrate to the reasonable satisfaction of the Authority that the Sub-Contractor's processes to assure compliance with the Security Standard have been carried out. Where that assurance is not already in place, the Sub-Contractor shall permit the Authority and the Client to inspect the processes being applied by the Sub-Contractor to comply with the Security Standard;
- (d) the Sub-Contractor shall comply and shall ensure that all Sub-Contractor Personnel comply with the rules, regulations and requirements that are in force whilst at that Government Establishment which shall be provided by the Authority on request (provided that if there is any change to such rules, regulations and requirements from those in force at the Effective Date, this shall be addressed as a Change in Law); and
- (e) when on board ship, compliance with the rules, regulations, and requirements shall be in accordance with the ship's regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements

shall be provided on request by the Officer in Charge. The provisions in Paragraph 11.4(d) relating to Change shall apply equally to this Paragraph 11.4(e).

11.5. *Sharing health and safety information*

The Sub-Contractor shall promptly report to the Client Contract Manager and the relevant Officer in Charge any of the following matters arising out of the performance of this Sub-Contract:

- (a) any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Sub-Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (“**RIDDOR**”) to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Sub-Contractor may be required to submit under RIDDOR to the relevant enforcing authority (for example, the Health and Safety Executive or Local Authority); or
- (b) the receipt by the Sub-Contractor of any statutory or regulatory notice from any Health and Safety Authority or Defence Authority asserting any material breach of Health and Safety Law or health and safety requirement.

11.6. *Health And Safety Hazard Control*

Where any Sub-Contractor Personnel are to enter a Government Establishment for the purpose of providing the Services:

- (a) the Sub-Contractor shall notify the Client Representative and the Officer in Charge or the site project liaison officer or the Authority Representative of:
 - (i) any health and safety hazards associated with the Services to be performed by the Sub-Contractor or any of Sub-Contractor Personnel;
 - (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
 - (iii) any precautions to be taken by the Sub-Contractor as well as any precautions which, in the opinion of the Sub-Contractor, ought to be taken by the Authority and/or the Client, in order to control such risks;
- (b) where such notification is received from the Authority by the Client, the Client shall notify the Sub-Contractor of:
 - (i) any health and safety hazards which may be encountered by the Sub-Contractor or any of Sub-Contractor Personnel on the Government Establishment;
 - (ii) any foreseeable risks to the health and safety of the Sub-Contractor or any of Sub-Contractor Personnel, associated with such hazards; and
 - (iii) any precautions to be taken by the Authority and/or the Client as well as any precautions which, in the Authority's opinion, ought to be taken by the Sub-Contractor, in order to control such risks;
- (c) the Sub-Contractor shall notify Sub-Contractor Personnel of and, where appropriate, provide adequate instruction in relation to:
 - (i) the hazards, risks and precautions notified by the Sub-Contractor to the Client under Paragraph 11.6(a);
 - (ii) the hazards, risks and precautions notified by the Client to the Sub-Contractor under Paragraph 11.6(b); and
 - (iii) the precautions which, in the opinion of the Sub-Contractor, ought to be taken by Sub-Contractor Personnel in order to control those risks;
- (d) The Sub-Contractor shall provide the Client Representative and the Officer in Charge or the site project liaison officer or the Authority Representative with:

- (i) copies of those sections of the Sub-Contractor's own safety policies and, where appropriate, the safety policies of Sub-Sub-Contractors which are relevant to the risks notified under Paragraph 11.6 (a);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by the Sub-Contractor to Sub-Contractor Personnel under Clause 11.6(c); and
- (e) where such notification is received from the Authority by the Client, the Client shall provide the Sub-Contractor with:
- (i) copies of those sections of the Authority's own safety policies which are relevant to the risks notified under Paragraph 11.6(b);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by the Authority to its employees similar to those called for from the Sub-Contractor under Paragraph 11.6 (c).

11.7. *Duty of co-operation and assurance*

Where, in delivering the Services, the Sub-Contractor is engaged in operational activities which because of their nature give rise to duties or obligations for the Authority with respect to the safety of those activities, the Sub-Contractor shall provide all such assistance, information and co-operation to the Authority as the Authority may require to enable the Authority to discharge those duties or obligations.

11.8. *Major Incidents*

- (a) If in the course of providing the Services there is an incident which causes damage to any part of a Government Establishment which leads to a breach of security or safety (a **"Major Incident"**) then:
- (i) where the Sub-Contractor becomes aware of the occurrence of a Major Incident, the Sub-Contractor shall immediately inform the Client Contract Manager; and
 - (ii) where the Client becomes aware of the occurrence of a Major Incident, which has an impact on the Sub-Contractor's ability to provide the Services, the Client shall provide to the Sub-Contractor all information relating to such Major Incident that it considers, acting reasonably (which shall include taking into account any issues of national security), the Sub-Contractor requires to deal with that Major Incident.
- (b) If the Authority deems the incident to be sufficiently serious to require investigation, the Sub-Contractor shall, if so requested by the Authority or the Client, conduct such an investigation to establish the recovery and remedial action which the Sub-Contractor would undertake to rectify the situation (a **"Major Incident Investigation"**) and shall submit to the Client Contract Manager the results of its investigations. If the incident is such that the UK Health and Safety Executive sets up an enquiry to investigate the cause then the Sub-Contractor shall be required only to establish recommendations for recovery and remedial action which the Sub-Contractor shall submit to the Client Contract Manager as required.
- (c) Where an investigation is to be conducted by the Sub-Contractor, the Sub-Contractor acknowledges and agrees that the Authority shall have the right to nominate other persons to participate in the investigation in any of the following capacities:
- (i) as a member of the investigating team;
 - (ii) in an advisory capacity; and
 - (iii) to question witnesses.

- (d) The presence of other persons shall be without prejudice to the Authority's right to accept or reject the findings and recommendations of the investigation.
- (e) If the Sub-Contractor wishes to call the Authority's personnel to an enquiry, then prior approval to do so shall be sought from the Client Contract Manager, who shall advise on the procedure to be followed.
- (f) If the Sub-Contractor wishes to call a member of staff belonging to other suppliers to an enquiry, then approval to do so shall be sought from the Client Contract Manager, who shall advise on the procedure to be followed.
- (g) A full report of the investigation signed at director level of the Sub-Contractor (a "**Major Incident Report**") shall be forwarded to the Client Contract Manager and shall include:
 - (i) notes of oral evidence given;
 - (ii) copies of any written evidence, sketches or diagrams which may be produced to illustrate evidence of witnesses; and
 - (iii) conclusions and recommendations.
- (h) If there is any difference of opinion among the investigation team on any material point, the grounds of difference shall be stated fully.
- (i) The Major Incident Report shall be without prejudice to the rights of the Client under this Sub-Contract, or otherwise, in respect of any loss or damage arising from any such incident.

11.9. *Management of Health and Safety*

- (a) The Sub-Contractor shall, with respect to the provision of the Services and the Sub-Contractor's occupation of the Naval Base and the Site, comply in all respects with:
 - (i) all applicable Health and Safety Law; and
 - (ii) all safety related requirements established by licence, permit or statutory notice granted or issued by Health and Safety Authorities from time to time including but not limited to nuclear site licences granted by the Office for Nuclear Regulation ("**ONR**"), and any notices issued by the ONR or Health and Safety Executive.
- (b) The Sub-Contractor shall notify the Client immediately upon becoming aware of any material breach of Paragraph 11.9(a)(i) or 11.9(a)(ii) above.
- (c) The Sub-Contractor shall at all times throughout the provision of the Services have in place and be certified under a recognised independently audited safety management system such as ISO 45001 or equivalent standard.

11.10. *Health and safety and environmental performance reporting*

- (a) The Sub-Contractor shall supply the Client with monthly reports on its performance, in terms of effective health and safety management and compliance with Environmental Law, in delivering the Services. Such reports shall include, as a minimum, details of the following matters arising out of or in connection with the Services:
 - (i) all reports and notifications which the Sub-Contractor or any Sub-Sub-Contractor has sent or been required to send to any Health and Safety Authority under the RIDDOR;
 - (ii) any other notifications or reports of breaches under Health and Safety Law or Environmental Law which the Sub-Contractor or any Sub-Sub-Contractor has sent or been required to send to any Competent Authority;

- (iii) the service on the Sub-Contractor or any Sub-Sub-Contractor of any statutory or regulatory notice from any Competent Authority or Defence Authority asserting any material breach of Environmental Law or Health and Safety Law or health and safety requirement;
 - (iv) any other formal enforcement action in respect of any breach of Health and Safety Law or Environmental Law against the Sub-Contractor or any Sub-Sub-Contractor or any officer or manager of the Sub-Contractor or Sub-Sub-Contractor including criminal prosecution or the imposition of any civil sanction;
 - (v) copies of any compliance assessment reports relating to compliance with Environmental Law of Health and Safety Law produced by any Competent Authority; and
 - (vi) copies of independent audit or compliance reports relating to environmental or health & safety management or compliance, including audits of compliance with the Client's environmental management system such as DEF STAN 00-051 Environmental Management Requirements for Defence Systems dated 14 April 2018 or equivalent environmental management standard or ISO 45001 or equivalent safety standard and with Safety, Health and Environment Manual BRD167 or any replacement or equivalent system as the Client may specify.
- (b) The Sub-Contractor shall supply the reports under Paragraph 11.10(a) to the addressees, in the form and with the frequency that in each case is specified by the Client.

11.11. *Environmental Matters*

- (a) The Sub-Contractor shall not cause or knowingly permit the presence of any Hazardous Substance in on or under the Site or the Naval Base in circumstances which constitute a breach of Environmental Law or give rise or may give rise to a legal requirement for Remediation.
- (b) The Sub-Contractor shall not exacerbate, mobilise, disturb, release, or cause to migrate any Hazardous Substances at, on, in, under or from (as the context so requires) the Site and/or the Naval Base.
- (c) The Sub-Contractor shall provide to the Client all such information and documentation in relation to Environmental Matters at the Site and/or the Naval Base as the Client may reasonably require from time to time, including in relation to any Environmental Permit, any Hazardous Substance stored or used or any Environmental Matter relevant to the Services.
- (d) The Sub-Contractor shall not disclose information to any Regulatory Bodies in relation to any Environmental Matter at or in connection with the Site and/or the Naval Base without giving the Client reasonable notification that it is going to make such a disclosure and obtaining the Client's written approval for such a disclosure (such approval not to be unreasonably withheld and noting that the Client shall be obliged to obtain the Authority's written consent under and in accordance with the Prime Contract) save for disclosures which are expressly required by Law. The Sub-Contractor shall give written notice to the Client as soon as possible of any disclosures made in accordance with this Paragraph 11.11(d).
- (e) The Sub-Contractor shall notify the Client immediately of any breach or alleged breach of its obligations or duties under this Paragraph 11.11, including any spillage or accident involving the release of Hazardous Substances, and any investigation into or enforcement action taken in respect of any Environmental Matter by Regulatory Bodies.

12. **Government Furnished Assets (GFA)**

- 12.1. The Parties agree that the Client may from time to time make GFA available to the Sub-Contractor solely for the performance of this Sub-Contract on such terms as the Client may specify or in accordance with the relevant provisions of the Prime Contract (as notified to the Sub-Contractor by the Client). Under such circumstances the Sub-Contractor shall:
- (a) operate and make use of the GFA in accordance with such terms; and
 - (b) upon the expiry or earlier termination of the Sub-Contract, in accordance with such terms or other instructions from the Client, return such GFA to the Client or such other third party as the Client may specify.

13. **Public relations and publicity**

The Sub-Contractor shall not (and shall procure that each relevant Sub-Contractor Or Sub-Sub-Contractor and the employees, agents or Sub-Sub-Contractors of the Sub-Contractor and each relevant Sub-Contractor Or Sub-Sub-Contractor shall not):

- (a) communicate with representatives of the press, television, radio or other communications media on any matter concerning this Sub-Contract; or
- (b) photograph or film in or upon any of the Client sites; or
- (c) erect or exhibit on any part of the Authority sites any notice or advertisement,
- (d) unless:
 - (i) the Authority's Representative has given its prior written consent;
 - (ii) as otherwise required to comply with applicable Law or stock exchange requirements; or
 - (iii) in accordance with a written communication protocol agreed by the Parties.

14. **Open Book Accounting**

14.1. The Sub-Contractor shall maintain on an open book basis, such financial, accounting and other records and information in connection with this Sub-Contract (collectively, "**Open Book Data**") as may be reasonably required in order to:

- (a) permit the Client or the Authority to undertake any review or check that the Sub-Contractor's compliance with its obligations is in accordance with this Sub-Contract;
- (b) demonstrate and verify:
 - (i) that each cost is an Actual Cost;
 - (ii) any other matter relating to the price payable under the Sub-Contract;
- (c) assist the Client or the Authority to calculate, assess, validate, agree, identify errors in, and to satisfy itself about data provided under or in relation to performance of the Sub-Contractor in relation to and the operation of this Sub-Contract; and
- (d) assist the Authority to operate the Authority's internal financial processes applicable in respect of each Contract Year.

14.2. The Open Book Data shall be kept sufficiently up to date and accurate for use by the Client and/or the Authority for the purposes set out in this Paragraph 14, including details of:

- (a) administrative overheads;
- (b) capital and revenue expenditure;
- (c) payments made to Sub-Sub-Contractors;
- (d) labour rates and hours;
- (e) employee numbers;
- (f) utilities' costs; and
- (g) plant and materials expenditure.

- 14.3. Without prejudice to the generality of Paragraphs 14.1 to 14.2 (inclusive), whenever making a proposal, estimate or calculation in relation to any matter to be determined or agreed, the Sub-Contractor shall:
- (a) supply to the Client in electronic format all such supporting material or evidence as is reasonably required to support, explain, illustrate and justify its proposal, estimate or calculation, including comprehensive details of all calculation methods; and
 - (b) in the case of estimates, the Open Book Data shall provide a reasonable estimate, taking into account all relevant circumstances and stating all assumptions made.

Standards

- 14.4. The Sub-Contractor undertakes that in providing Open Book Data, it shall have regard to and comply with the provisions of Clause 5 (*Performing the Services*).

Inclusion of Open Book Provisions in Sub-Sub-Contracts

- 14.5. If, in connection with or for the purposes of this Sub-Contract, any Sub-Sub-Contract the value of which exceeds one hundred thousand pounds (£100,000) is placed by the Sub-Contractor:
- (a) on a non-competed basis; or
 - (b) on a competed basis otherwise than by acceptance of the lowest acceptable competitive tender,
- then except in so far as the Client otherwise agrees in writing, the Sub-Contractor shall:
- (i) include in that Sub-Sub-Contract provisions in the same form set out in this Paragraph 14, Paragraph 14.9(c) (Audits, Checks, Inspections and Examination) so that the Client, the Authority, CAAS, the National Audit Office, the Comptroller and Auditor General are entitled to the same rights in respect of access to and use of the records of the Sub-Sub-Contractor as they have in relation to the Sub-Contractor's records by virtue of this Paragraph 14; and
 - (ii) enforce its rights under those provisions in the event of any breach thereof by the relevant Sub-Sub-Contractor.

Other relevant obligations

- 14.6. All Open Book Data referred to in this Paragraph 14 is subject to the obligations set out in this Sub-Contract at Paragraph 4 (*Security*), Paragraph 8 (*Confidentiality and Freedom of Information*), Paragraph 9 (*Transparency*) and Paragraph 13 (*Public relations and publicity*).

Sub-Contractor's Records and Accounts

- 14.7. The Sub-Contractor shall maintain Open Book Data from the date on which the Sub-Contract was entered into for the period ending:
- (a) on the sixth (6th) anniversary of the financial year of the Sub-Contract in which the obligation to keep those relevant records first arose; or
 - (b) two (2) years after the Sub-Contract expiry date,
- whichever is the longer (and this Paragraph 14.7 shall survive termination or expiry).

- 14.8. The Sub-Contractor shall maintain books of accounts relating to the provision of the Services and in so doing shall observe the requirements of best accountancy practice.

- 14.9. Subject and without prejudice to the provisions of Paragraph 8 (*Confidentiality and Freedom of Information*), the Sub-Contractor shall (at its own cost):

- (a) permit all records containing Open Book Data and such other records as are required to be produced and maintained by the Sub-Contractor under this Sub-Contract to be examined and, if necessary, copied by or on behalf of the Client and/or the Authority; and
- (b) provide further information or explanation relating to the Open Book Data, whether after the examination of the Open Book Data or otherwise, where required by the Client and/or the Authority.
- (c) provide to the Client so as to enable the Client to provide such information to the CAAS, the National Audit Office, the Comptroller and Auditor General and their respective staff, as the case, may be with all reasonable co-operation and with direct access to both its personnel (including those engaged in the Sub-Contractor's performance of this Sub-Contract) and any Open Book Data for the performance of any such audit, check, inspection and/or examination referred to in this Paragraph 14 (*Open Book Accounting*).

15. Vesting

15.1. Vesting of Goods

Subject to the following provisions of this Paragraph 15, any and all articles, documentation, and all other goods and equipment and related materiel (military material and equipment) supplied by the Sub-Contractor to the Client pursuant to this Sub-Contract (**Goods**) shall vest in and become the absolute property of the Client on the earlier of:

- 15.1.1. the Sub-Contractor allocating Goods specifically to any Services and shall from that time be in the possession of the Client for the sole purpose of completing such Services and shall not be within the control or disposition of the Sub-Contractor other than for that purpose;
- 15.1.2. the installation of the relevant Goods at, on or in the Site or the Naval Base or any vessel, plant or equipment or any part thereof; or
- 15.1.3. the charging by the Sub-Contractor of the cost of such Goods to the relevant Services.

15.2. No lien

The Sub-Contractor shall not permit any lien to arise or subsist in respect of such Goods, the property in which has vested in the Client pursuant to Paragraph 15.1 (*Vesting of Goods*), for any sum due from the Sub-Contractor or its Sub-Sub-Contractors or any third party.

15.3. Marking of Goods and Material

Without prejudice to Paragraph 15.1 (*Vesting of Goods*), the Sub-Contractor shall ensure that from the time vesting occurs in accordance with this Paragraph 15, or as soon as practicable thereafter, Goods are marked or recorded so that they are readily identifiable as the property of the Client other than for Goods that fall into the category of consumables, ready use items, raw materials, office supplies and material that is held in general stock holdings. The Sub-Contractor shall comply with any direction given by the Client in this respect.

15.4. Handover of Goods

The Sub-Contractor shall hand over to the Client on demand any Goods the property in which has vested in the Client pursuant to Paragraph 15.1 (*Vesting of Goods*), and if it shall fail to do so the Client shall be entitled to remove such Goods, and to recover the cost of so doing from the Sub-Contractor.

15.5. Re-vesting following Rejection or Termination

- 15.5.1. If any Goods are rejected by the Client (in accordance with the applicable processes under this Sub-Contract where a rejection process is specified) the Goods shall immediately re-vest in the Sub-Contractor (unless a notice of objection has been issued to the Client in accordance with any relevant provisions of this Sub-Contract, in which event those provisions shall apply).

- 15.5.2. If the Client terminates this Sub-Contract otherwise than under Clause 33.6, any Goods which have not been accepted in accordance with this Sub-Contract (where an acceptance process is specified) shall re-vest in the Sub-Contractor. Such re-vesting shall occur on the expiry of twenty (20) Days from the date on which that termination shall take effect, unless the Client has given the Sub-Contractor Notice, prior to that termination, that the Client elects to retain the property in the Goods.
- 15.5.3. Any payment made by the Client in respect of any Goods which re-vest in the Sub-Contractor under Paragraphs 15.5.1 or 15.5.2 shall be recoverable from the Sub-Contractor.
- 15.5.4. The Sub-Contractor shall hand over to the Client any Goods in which the Client has elected to retain the property under Paragraph 15.5.2. If the Sub-Contractor fails to do so, the Client shall have the right to enter the Sub-Contractor's premises and remove the Goods and recover the cost of doing so from the Sub-Contractor.
- 15.5.5. The Client shall pay a fair and reasonable price for any Goods in which it has elected to retain the property under Paragraph 15.5.2 and which are handed over to it by the Sub-Contractor or otherwise come into its possession.
- 15.5.6. Where any Goods in the Client's possession or control has re-vested in the Sub-Contractor in accordance with Paragraphs 15.5.1 or 15.5.2, the Sub-Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in this Sub-Contract. If the Goods are on the premises of the Client, the Sub-Contractor shall remove them within ten (10) Days after the date of their re-vesting (provided always that the Sub-Contractor is provided with requisite access to such premises by the Client).

15.6. **Prolonged Force Majeure**

- 15.7. The provisions of Clauses 13.6 – 13.10 (*Force Majeure: Prolonged Force Majeure*) shall apply to the Sub-Contract.

SCHEDULE 2 - MANDATORY POLICIES

The Mandatory Policies are (Current revision, as amended)

- Security Compliance for Sub-Contractors
- KBS Contractors Safety, Health & Environmental Conditions
- KBS Supplier Principles

Project No.		Sub-Contractor Company Name	
Project Title		Sub-Contractor Contact Name	
Order Number		EWN Number	
Location			
Issued to	<i>Client to Sub-Contractor</i> ☐ <i>Sub-Contractor to Client</i> ☐		

Select as required (multiple boxes can be selected)

- | Description of the Early Warning | | | |
|----------------------------------|--|------|--|
| <hr/> | | | |
| Signed
(Sub-Contractor) | | Date | |

SCHEDULE 4- CHANGE NOTICE

Sub-Contract details:	Framework Sub-Contract for Services [INSERT SUB-CONTRACTOR NAME]
Originator	Client ☐ Sub-contractor ☐
Works Order Reference Number	WO ### Version #
Date raised	
Title of the Change	[INSERT TITLE OF CHANGE]
Request or recommendation	[REQUEST OR RECOMMENDATION]
Justification	[JUSTIFICATION FOR CHANGE]
Price of the Change (if any)	[INSERT DETAILS]
Proposed Changes to Programme, Milestones or Key Milestones	
Supporting Information	[INSERT DETAILS OF: • PERSONNEL TO BE PROVIDED; • DOCUMENTATION TO BE PROVIDED; • TRAINING TO BE PROVIDED; • WORKING ARRANGEMENTS; AND • ANY OTHER RELEVANT REQUIREMENTS]
Client Use Only	
Approved by	
Date Approved	
Revised Order Price	[INSERT REVISED]
Version Control	The Works Order Revision [WO ### Version##] The Purchase Order Number

SCHEDULE 5 – Export Control

1. The following definitions shall apply to this Schedule 5 (Export Control):

 “Declaration Form” means the Export Control Jurisdiction & Classification Declaration Form

 “EAR” means the US Department of Commerce’s Export Administration Regulations;

 “EAR Technology” has the meaning given to it in the EAR;

 “ITAR” means the US Department of State’s International Traffic in Arms Regulations, and

 “ITAR Technical Data” has the meaning given to it in the ITAR.
2. Each Party shall comply with all applicable import and export control laws and regulations in fulfilling the Sub-Contract.
3. The Sub-Contractor shall provide all information about the supplies, including without limitation, information regarding constituent parts thereof, that may be necessary for the Client’s compliance with all applicable import and export control laws and regulations.
4. The Sub-Contractor shall:
 - 4.1. notify the Client in writing at the time the Order is accepted or as soon as the Sub-Contractor is aware, but no later than twenty (20) Days prior to the first agreed scheduled delivery or performance date, as well as when any changes occur or subsequent information is received or identified by the Sub-Contractor, whether the supplies (or any part thereof) constitute Controlled Material
 - 4.2. in addition to the notification at Clause 4.1 of this Schedule 5 – Export Control, when requested by the Client, provide a completed and signed Declaration Form, certifying the jurisdiction and classification of Controlled Material. The Client will provide the Sub-Contractor with a Declaration Form for completion which the Sub-Contractor will return to the Client within twenty (20) Days of the date of the Sub-Contract and in any event in advance of receipt by the Client of any Controlled Material provided under the Sub-Contract.
 - 4.3. The Sub-Contractor shall provide the following information as a minimum:
 - 4.3.1. a description of the Controlled Material;
 - 4.3.2. the name and address of the US exporter and/or manufacturer of all ITAR/EAR Controlled Material;
 - 4.3.3. the part reference number for the Controlled Material; and
 - 4.3.4. the ITAR US Munitions List category and clause number (and any special designation as Significant Military Equipment or Major Defense Equipment); the EAR Commerce Control List Export Control Classification Number (ECCN) (or other EAR designation); or the Military or Dual-Use List Classification Number and identification under UK, EU and Australian regulations;
 - 4.4. obtain all required export licences, agreements and other authorisations necessary to ensure delivery of the supplies to the Client in accordance with the delivery or performance dates required under the Sub-Contract; and
 - 4.5. comply with all conditions relating to export, re-export, transfer or use of Controlled Material contained within export licences, agreements and other authorisations.
5. If any of the Controlled Material, including any constituent part thereof, to be provided by or through the Sub-Contractor under the Sub-Contract is regulated under the ITAR or EAR (unless such are classified by the US exporter/manufacturer as EAR99 in which case the Sub-Contractor shall notify the Client of this status in writing), the Sub-Contractor shall:

- 5.1. consult with the Client about the relevant authorisations required from the appropriate US authorities and request information from the Client which is necessary to make the Sub-Contractor's authorisation request to the US authorities complete and accurate, including without limitation, full details of end use, end user(s), foreign consignees, intermediate consignees, sub-licensees and any other requirements such as information on dual or third country national employees, contract employees, location, or pre-existing company organisation authorisations which may be applicable; and
- 5.2. provide to the Client the following further information and documentation in writing at the time the Order is accepted or no later than twenty (20) Days prior to the first agreed scheduled delivery or performance date:
 - 5.2.1. details of the relevant US export licence, agreement or other authorisation (including details of any exemptions or exceptions), such details to include the reference numbers and dates, authorised parties and end use as specified in Clause 5.1 of this Schedule 5 – Export Control, and any limitations/provisos; or
 - 5.2.2. full copies of such US export licences, agreements or other authorisations, including any correspondence with the US Department of State or the US Department of Commerce consenting to or giving guidance on the use of exemptions or exceptions or listing limitations/provisos that are necessary for the Client's compliance.
6. ITAR Delivery. Unless the applicable regulations have been revised to require otherwise, for each ITAR Defense Article being delivered by the Sub-Contractor, the Sub-Contractor shall include as an integral part of the invoice and, in the case of ITAR Technical Data, on the document itself:
 - a) the country of ultimate destination
 - b) the end user
 - c) the license or other approval number or exemption citation; and
 - d) the Destination Control Statement required under the ITAR (i.e. 22 C.F.R. 123.9).
- 6.1. In respect of ITAR Technical Data the following additional marking must be included on the cover sheet or document itself: "EXPORT CONTROLLED DATA: This document contains technical information and the export, re-export and transfer (in country) is governed by the U.S. International Traffic in Arms Regulations (ITAR)".
- 6.2. When also exporting or re-exporting items subject to the EAR pursuant to a Department of State license or other authorisation or approval, the Sub-Contractor must also provide the Client with the appropriate EAR classification information for each item. This includes the Export Control Classification Number (ECCN) or EAR99 designation.
7. EAR Delivery. Unless the applicable regulations have been revised to require otherwise, for each item of EAR Controlled Material being delivered by the Sub-Contractor, the Sub-Contractor shall include as an integral part of the invoice that accompanies the shipment, and, in the case of EAR Technology, on the EAR Technology itself:
 - a) the country of ultimate destination;
 - b) the end user;
 - c) the license or other approval number or exemption citation; and
 - d) the Destination Control Statement required under the EAR (i.e. 15 C.F.R. 758.6).
- 7.1. In respect of EAR Technology the following additional marking must be included on the cover sheet or document itself: "EXPORT CONTROLLED DATA: This document contains technical information and the export, re-export and transfer (in-country) is governed by the U.S. Export Administration Regulations (EAR)".
- 7.2. In addition, the Sub-Contractor must also provide the licence number(s) or license exception utilised and the ECCN for all 9x515 or 600 series items being exported, re-exported, or transferred (in-country).

8. Where practical, the Sub-Contractor shall segregate deliveries of ITAR or EAR Controlled Material from other deliveries, and shall not mix ITAR Controlled Material with EAR Controlled Material on the same licences, agreements or authorisations unless permitted by US laws and regulations.
9. If engaged in the business of either exporting or manufacturing (whether exporting or not) ITAR Defence Articles or defence services (as defined in the ITAR 22 C.F.R 120.6 and 120.9 respectively), the Sub-Contractor shall maintain an effective export/import compliance program in accordance with the ITAR and, if located in the US, shall register with the US Department of State as required by the ITAR.
10. If engaged in brokering activities within the meaning of the ITAR (22 C.F.R. 129), the Sub-Contractor shall obtain and maintain registration with the US Department of State as required by the ITAR, and shall obtain and maintain any necessary approval with respect to the Supplies.
11. If, in the performance of the Sub-Contract, either Party is, or envisages being, engaged in trafficking and brokering activities under any jurisdiction, for example where Controlled Material is to be moved between two third countries, they shall inform the other Party insofar as those activities impose any legal obligations on the other Party. The Parties shall, in addition to any US brokering requirements, obtain and maintain the registrations and authorisations that are required under all applicable legislation.
12. The Sub-Contractor recognises and accepts that the Sub-Contractor and the Client have disclosure requirements when making applications for the export, re-export, or retransfer of US defense articles or defense services subject to the ITAR Part 130. In this context, when requested to do so by the Client, the Sub-Contractor shall make a written certification to the Client in a timely manner and not later than twenty (20) calendar days after receipt of such request, stating all necessary information required to comply with Part 130 of the ITAR.
13. The Sub-Contractor shall provide immediate written notification to the Client in the event of any changes to information provided to the Client under this Schedule 3 or any changes in circumstances affecting any licence or agreement, and shall respond promptly to any written inquiry made by the Client seeking to confirm or update information in relation to the Sub-Contractor.
14. At the Client's direction, the Sub-Contractor shall return or destroy all of the ITAR Technical Data and/or EAR Technology or other Controlled Material exported to the Sub-Contractor pursuant to the Order upon fulfilment of its terms, send written confirmation of the destruction to the Client within five (5) Days of the destruction, and create and maintain the records required under the ITAR and EAR.

SCHEDULE 6 - TIMBER AND WOOD DERIVED PRODUCTS POLICY

1 Definitions

1.1 In this Schedule, the following words and expressions shall have the meanings set out respectively against them:

CPET means the UK Government's Central Point of Expertise for Timber.

FLEGT means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging.

Evidence means either:

- (a) an invoice or delivery note from the timber Sub-Contractor or Sub-Sub-Contractor to the Sub-Contractor specifying that the product supplied to the Client is Forest Stewardship Council FSC or Programme for the Endorsement of Forest Certification PEFC certified; or
- (b) other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET.

Independent Verification means that an evaluation is undertaken and reported by an individual or body:

- (a) whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent; and
- (b) who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent.

Timber and Wood-Derived Products means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element.

Recycled Timber means recovered wood that prior to being supplied to the Client had an end use as a standalone object or as part of a structure. This Schedule uses Recycled Timber to cover:

- (a) pre consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the category of Virgin Timber;
- (b) post consumer reclaimed wood and wood fibre, and driftwood; and
- (c) reclaimed timber abandoned or confiscated at least ten (10) years previously.

Virgin Timber means Timber and Wood-Derived Products that do not include Recycled Timber.

Short-Rotation Coppice means a specific management regime whereby the poles of trees are cut every one to two (2) years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short Rotation Coppice is not conventional coppice, which is subject to the timber policy.

Legal and Sustainable means production and process methods, also referred to as timber production standards, as defined by the document titled UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement. The edition current on the day the *Client* issued the contract documents shall apply.

2 Requirements for Timber

2.1.1 All Timber and Wood-Derived Products supplied by the Sub-Contractor under this Sub-Contract (including all Timber and Wood-Derived Products supplied by Sub-Sub-Contractors):

- (a) shall comply with the requirements of the scope as specified by the Client; and
- (b) must originate either:
 - (i) from a Legal and Sustainable source; or
 - (ii) from a FLEGT-licensed or equivalent source.

2.1.2 In addition to the requirements of Clause 2.1.1 above, all Timber and Wood-Derived Products supplied by the Sub-Contractor under this Sub-Contract (including all Timber and Wood Derived Products supplied by Sub-Sub-Contractors) shall originate from a forest source where management of the forest has full regard for:

- (a) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- (b) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- (c) safeguarding the basic labour rights and health and safety of forest workers.

3 Requirements for Proof of Timber Origin

3.1.1 If requested by the Client, the Sub-Contractor shall provide to the Client evidence that the Timber and Wood-Derived Products supplied to the Client under this Sub-Contract complies with the requirements of Clauses 2.1.1 or 2.1.2, or both.

3.1.2 The Client reserves the right at any time during the execution of this Sub-Contract and for a period of five (5) years from final delivery under this Sub-Contract to require the Sub-Contractor to produce the evidence required for the Client's inspection within ten (10) Days of the Client's request.

3.1.3 If the Sub-Contractor has already provided the Client with the evidence required under Clause 3.1.1, the Sub-Contractor may satisfy these requirements by giving details of the previous notification and confirming the evidence remains valid and satisfies the provisions of Clauses 2.1.1 or 2.1.2.

3.1.4 The Sub-Contractor shall maintain records of all Timber and Wood-Derived Products, delivered to and accepted by the Client, in accordance with DEFCON 609 (Edition 08/18).

4 Recycled Timber

Notwithstanding Clause 3.1.1, if exceptional circumstances render it strictly impractical for the Sub-Contractor to record evidence of proof of timber origin for previously used Recycled Timber, the Sub-Contractor shall support the use of this Recycled Timber with:

- (a) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
- (b) an explanation of the circumstances that rendered it impractical to record evidence of proof of timber origin.

5 Independent Verification

The Client reserves the right to decide, except where in the Client's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the evidence submitted to it demonstrates compliance with Clauses

2.1.1 and 2.1.2. In the event that the Client is not satisfied, the Sub-Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:

- (a) verify the forest source of the timber or wood; and
- (b) assess whether the source meets the relevant criteria of Clause 2.1.2.

6 Statistical Reporting

- 6.1.1 The statistical reporting requirement at Clause 6.1.2 applies to all Timber and Wood-Derived Products delivered under the Sub-Contract. The Client reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government timber procurement policy. Amendments to the statistical reporting requirement will be made in accordance with Clause 8 (*Early Warning and Change Control Procedure*).
- 6.1.2 The Sub-Contractor shall provide to the Client, using DEFFORM 691A, the data or information the Client requires in respect of Timber and Wood-Derived Products delivered to the Client under this Sub-Contract. The Sub-Contractor shall send all completed DEFFORMs 691A to the Client's address identified in the Order.
- 6.1.3 DEFFORM 691A may be amended by the Authority and/or the Client from time to time, in accordance with Clause 8 (*Early Warning and Change Control Procedure*).

SCHEDULE 7 – KEY PERFORMANCE INDICATORS

- 1.1 The Sub-Contractor's performance of the Services shall be monitored by the Client in accordance with timely and accurate completion of the Milestones and Key Milestones as set out in the Order, in order to determine the Sub-Contractor's actual performance under the Sub-Contract
- 1.2 If the Sub-Contractor fails to complete the Milestones and Key Milestones stated in the Order (subject to any extension of that date pursuant to Clause 8 (*Early Warning and Change Control Procedure*), any other right, relief or equivalent instruction awarded by the Authority to the Client pursuant to the Prime Contract or otherwise agreed between the parties in writing), then the following Performance Adjustments shall apply:

Key Performance Indicator	Measure	Performance Adjustment
1	The Sub-Contractor shall ensure that the Milestones that were due for completion (including those outstanding from previous Milestones) have been delivered to the Programme and in accordance with the Order	Retention by the Client 10% of the Milestone Amount "Milestone Retention"

Key Performance Indicator	Measure	Performance Adjustment
2	The Sub-Contractor shall ensure that the Key Milestones that were due for completion (including those outstanding from previous Milestones) have been delivered to the Programme and in accordance with the Order	Deduction by the Client 10% of the Milestone Amount "Milestone Deduction"

- 1.3 If the Sub-Contractor is late in completing a Milestone, the Client will retain ten per cent (10%) of the value of that Milestone (the "**Milestone Retention**"). The Milestone Retention will be released:
- 1.3.1 when the Sub-Contractor has achieved each of the criteria identified as being required to be achieved in order for the relevant Milestone to be completed, and
- 1.3.2 on completion of the next subsequent Milestone in accordance with the Date for completion outlined in the Milestone Payment Table.
- 1.4 If the Sub-Contractor is late in completing a Key Milestone, the Client will permanently deduct ten per cent (10%) of the value of that Key Milestone (the "**Milestone Deduction**") in addition to any outstanding Milestone Retentions.
- 1.5 The parties acknowledge that any event, act or omission that results in a failure to achieve a Milestone or Key Milestone may also give rise to a separate course of action against the Sub-Contractor under the terms of this Sub-Contract.

Accordingly, the remedies available to the Client as set out in this Schedule 7 are without prejudice to any separate course of action under this Sub-Contract that arises from the same event, act or omission.

1.6 A Performance Adjustment shall trigger a Pay Less Notice in accordance with Clause 21.8 (*Payment to the Sub-Contractor*)

1.7 For the purposes of Clause 33.1.4 a material breach shall occur if two consecutive Key Milestones are not achieved in accordance with the Order.

SCHEDULE 8 – PLASTIC PACKAGING TAX

DEFCON 671 (Edition 10/22)

1. Definitions

In this Schedule, the following words and expressions shall have the meanings set out respectively against them:

“Condition” means this DEFCON 671;

“Articles” means all goods (excluding Services) which the Contractor is required under the Contract to supply;

“PPT Legislation” means the legislative provisions set out in Part 2 and Schedules 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;

“PPT” means a tax called “plastic packaging tax” charged in accordance with Part 2 of the Finance Act 2021;

“Plastic Packaging Component(s)” shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation.

1. The Sub-Contractor shall ensure that any PPT due in relation to this Sub-Contract is paid in accordance with the PPT Legislation.
2. The Order Price includes any PPT that may be payable by the Sub-Contractor in relation to the Sub-Contract.
3. On reasonable notice being provided by the Client, the Sub-Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Sub-Contract.
4. The Sub-Contractor shall notify the Client, in writing, in the event that there is any adjustment required to the Order Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Client, the Sub-Contractor shall provide any such information that the Client requires in relation to any such adjustment.
5. In accordance with DEFCON 609 the Sub-Contractor (and their Sub-Sub-Contractors) shall maintain all records relating to PPT and make them available to the Client when requested on reasonable notice for reasons related to the Sub-Contract.
6. Where the Sub-Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
 - a) confirmation of the tax status of any Plastic Packaging Component;
 - b) documents to confirm that PPT has been properly accounted for;
 - c) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
 - d) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
7. The Client shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Sub-Contractor, to ensure any information that has been provided in accordance with Clause 6 above is accurate.

8. In the event the Sub-Contractor is not required to register for PPT they (and to the extent applicable, their Sub-Sub-Contractors) shall provide the Client with a statement to this effect and, to the extent reasonably required by the Client on reasonable notice, supporting evidence for that statement.
9. The Sub-Contractor shall provide, on the Client providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

SCHEDULE 9 – Works Order Template**Part 1 – Works Order Details**

This Order is entered into between the Parties pursuant to the Sub-Contract [enter Contract reference]. The terms of the Sub-Contract, are incorporated by reference into this Order.

Sub-Contractor Name		Sub-Contract Reference	
Works Order Number		Version	
Project Reference Number and Name			
Order Issue Date			
Purchase Order Reference Number			
Contract Manager for Notices (Sub-Contractor):	[insert name of relevant persons at the Sub-Contractor]		
Key Personnel (Sub-Contractor)	[insert name of relevant persons at the Sub-Contractor]		
Contract Manager for Notices (Client):	[Insert name of KBS Procurement Specialist Lead]		
Project Manager (Client)	[Insert name of KBS PM]		
Commencement Date:	[insert date]		
Order Price (excluding VAT):	£[insert Order Price]		
Required Insurances In addition to Clause 28 the Sub-Contractor shall take out and maintain the following additional policies (which for the avoidance of doubt shall be deemed included within the term Required Insurances).	Marine Insurance [Value] Professional Indemnity Insurance [Value] Cyber Technical Errors and Omissions [Value] Contractors All Risks [Value]		
Nominating Body	[Vice President of RICS [or] other body as agreed]		

Part 2 - Numbered Documents

Numbered Document Reference	Document Title	Version	Date
1	Specification [Insert file name] (latest from the tender pack)		
2	Pricing [Insert file name] (from the Sub-Contractor which has been agreed)		

3	ITT Response Doc [Insert file name] (as submitted at tender)		
4	Programme [Insert file name] (latest version as agreed and approved via KBS governance)		
5	Drawings [List all documents using the file names separately] (latest from the tender pack) – If required		
6	Pre Contract Information [Insert file name] (latest from the tender pack) – If required		
7	Risk Register [Insert file name]		

Part 3 – Milestone Summary Table

MILESTONE SUMMARY									
Milestones	Description	Task Number	Date for Milestone completion	Acceptance Criteria	Key Milestone Y/N	Milestone Amount		Retention Amount	Deduction Amount
						Price Firm	Price Estimate		
MS 1						£0.00	£0.00		
MS 2						£0.00	£0.00		
MS 3						£0.00	£0.00		
MS 4						£0.00	£0.00		
MS 5						£0.00	£0.00		
MS 6						£0.00	£0.00		
MS 7						£0.00	£0.00		
MS 8						£0.00	£0.00		
MS 9						£0.00	£0.00		
MS 10						£0.00	£0.00		
				Sub-totals		£0.00	£0.00	£0.00	£0.00
				Totals		£0.00	£0.00		

Part 4 – Works Order Change Log

Change Notice Number	Change Notice Description	Revised Works Order Issue Date	Version Control <i>(Identify if Numbered Documents have been up-issued as part of the agreed Change)</i>
1			

SCHEDULE 10 – Sub-Contractor’s Pricing Rates