

**DEFENCE STRATEGIC RADIO SERVICES (DSRS)**

**Contract No: 700007967**

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| **Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.****And****Babcock Integrated Technology Limited****Ashton House****Ashton Vale Road****Bristol****BS3 2HQ** |

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1. **General**
	1. The defined terms in the Contract and the meaning ascribed to them are as set out in Schedule 1 – (Definitions in the Contract) or in the DEFCONs that include their own definitions.
	2. The Contractor shall comply with all applicable Legislation, whether specifically referenced in the Contract or not. The Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of Paragraph 4 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Contractor acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Contract document shall not affect the Parties’ rights or obligations under the Contract
	3. The Contractor warrants and represents, that:
		1. It has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under the Contract.
		2. From the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract.
		3. As at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
		4. For so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
		5. In the event of any breach of the warranties set out in Clauses 1.3.1 to 1.3.4 (inclusive), the Authority shall be entitled to terminate the Contract at will. In the event of such termination, no sum shall be payable to either Party by the other.
	4. Unless the context otherwise requires:
		1. The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
		2. The words “include”, “includes”, “including” and “included” are to be construed as if they were immediately followed by the words “without limitation”, except where explicitly stated otherwise.
		3. The expression “person” means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
		4. References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
		5. The heading to any Contract provision shall not affect the interpretation of that provision.
		6. Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised to take or do that decision, act, or thing on behalf of the Authority.
		7. Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.
	5. The Contractor shall be bound by the following Defence Conditions (DEFCONs):

| **DEFCON** | **Edn** | **Title** |
| --- | --- | --- |
|  76 | 12/06 | Contractor Personnel at Government Establishments |
|  82  | 11/16 | Special Procedure for Initial Spares |
|  532B |  5/18 | Protection of Personal Data. As there is no personal data being processed as part of the contract, there is no requirement for a DEFFORM 532 |
|  601 |  4/14 | Redundant Material |
|  602A | 12/17 | Quality Assurance (With Deliverable Quality Plan). For the purposes of the Contract the “Authority” in Clause 1 of this DEFCON is the Authority’s Project Manager as set out in Box 2 of DEFFORM 111 |
|  624 | 11/13 | Use of Asbestos. The Parties acknowledge and agree that for the purposes of Clause 2 of DEFCON 624, reference therein to DEFCON 501 is replaced by Schedule 1 (Definitions in the Contract) |
|  649 | 12/16 | Vesting. The Parties acknowledge and agree that for the purposes of Clause 5 of DEFCON 649, reference therein to DEFCONs 656A and 656B is replaced by Condition 43 – Termination for Convenience, and reference to DEFCON 525 is replaced by Condition 27 – Acceptance. |
|  658 | 10/17 | Cyber. The Cyber Risk Level for this Contract is deemed to be **High**. The Parties acknowledge and agree that for the purposes of DEFCON 658 references therein to DEFCON 514 are replaced by Clause 41.3; references to DEFCON 501 are replaced by Schedule 1 (Definitions in the Contract)references to DEFCON 530 are replaced by Condition 38 – Dispute Resolution. |
|  659A  |  2/17 | Security Measures |
|  660 | 12/15 | Official Sensitive Security Requirements. The official security conditions and Security Aspects Letter (SAL) referred to in Clause 2 of this DEFCON are in Schedule 5 and 18 respectively |
|  678 |  9/19 | SME Spend Data Collection. The Parties acknowledge and agree that for the purposes of Clause 5 of DEFCON 678, reference to DEFCON 620 therein is replaced by Clause 6.4 and Schedule 2 (Contract Change Procedure), and for the purpose of Clause 6 of DEFCON 678 reference to DEFCON 609 therein is replaced by Condition 18 – Records and Information. |
|  681 |  6/02 | Decoupling Clause – Subcontracting with the Crown |
|  694 |  7/18 | Accounting for Property of the Authority. The Parties acknowledge and agree that for the purposes of Clause 1g of DEFCON 694, reference to DEFCON 502 is removed and reference to DEFCON 611 in Clause 2 of DEFCON 694 is replaced by Condition 46 – Government Furnished Assets. |
|  697 |  7/13 | Contractors on Deployed Operations |

1. **Disclaimers**
	1. The Authority has made available to the Contractor prior to the date hereof certain materials, documents and data related to the project (the “**Disclosed Data**”). The Disclosed Data includes all such materials, documents and data which were provided to the Contractor in connection with the Invitation to Tender in respect of the Project.
	2. The Authority shall not be liable to the Contractor (whether in contract, tort, by statute or otherwise and whether or not arising out of any negligence on the part of the Authority or any agent, servant or contractor of it) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind in the Disclosed Data.
	3. The Authority gives no warranty or undertaking that the Disclosed Data represents all of the information in its possession or power (either during the tender for the Project or at the execution of the Contract) relevant or material to the Project or the obligations undertaken by the Contractor under the Contract. The Authority shall not be liable to the Contractor in respect of any failure to disclose or make available (whether before or after the execution of the Contract) to the Contractor any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform the Contractor (whether before or after execution of the Contract) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.
	4. The Contractor acknowledges and confirms that:
		1. It has conducted its own analysis and review of the Disclosed Data and has before the Effective Date of Contract satisfied itself as to the accuracy, completeness and fitness for purpose of all such Disclosed Data upon which it places reliance, and;
		2. It shall not be entitled to make any claim against the Authority whether in damages or for extensions of time or additional payments under the Contract on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or the matters referred to in Clause 2.5 or Clause 2.4.1 or on the grounds that incorrect or insufficient information was given to it by any person, whether or not in the employ of the Authority. Nor shall the Contractor be relieved from any risks or obligations imposed on or undertaken by it under the Contract on any such ground.
	5. Without limitation to any other provision of the Contract (including Clause 2.2 to 2.4), the Contractor shall be deemed, prior to the Effective date of Contract, to have and warrants that it has:
		1. Inspected and examined to its satisfaction the Equipment and the Sites.
		2. Satisfied itself as to the nature of the climatic, hydrological, ecological, environmental and general condition of the Sites.
		3. Satisfied itself as to the nature of any design, work, plant and materials necessary to perform the Contract.
		4. Satisfied itself as to:
			1. The risk of injury or damage to property adjacent to or affecting the Sites and to occupiers of such property.
			2. The possibility of interference by persons (other than the Authority and other than persons claiming rights or title through, under or paramount to the Authority) with access to or use of the Equipment or the Sites.
			3. The precautions and times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
			4. Has conducted its own analysis and review of the materials, documents and data referred to in this Condition which bear on any of the matters referred to in Clause 2.5.1 to 2.5.4.3 inclusive.
		5. Generally obtained for itself all necessary information as to:
			1. The risks, contingencies and all other circumstances which may influence or affect its obligation under the Contract.
			2. Any other factors which would affect its decision to enter into the Contract or the terms on which it would do so.
	6. The provisions of any one part of this Condition 2 shall be without limitation to the provision of any other part of this Condition 2.
2. **Duration of Contract and Options**
	1. The Contract and the rights and obligations of the Parties to the Contract, comes into effect on the Effective Date of Contract and will expire automatically at 23:59 hrs on 30 June 2030 (the “**Contract Term**”) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or is extended by the exercise by the Authority of an option to extend the term as set out in Clauses 3.2 to 3.3 (inclusive) or otherwise extended. For the avoidance of doubt, in the event the Contract is terminated, the Licences in Schedule 11 (Licences to Occupy) shall also terminate on the same date.
	2. The Contractor hereby grants to the Authority the irrevocable options detailed in Appendix XI to the Schedule of Requirements, in accordance with the terms and conditions set out in the Contract or any such subsequent contract or contracts where such options are taken up, it being agreed that the Authority has no obligation to exercise such options.
	3. The Authority shall have the right to exercise the options by the specified dates or within such further period as corresponds to the aggregate of any period(s) of delay in the delivery programme, or for the duration of which the Authority is prevented from exercising any such option due to any other breach of the Contract by the Contractor.
3. **Governing Law**
	1. The Contract shall be subject to English Law.
	2. Subject to Condition 38 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
	3. Any dispute arising out of, or in connection with, the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition and for the enforcement of any judgment, order or award given under English jurisdiction.
	4. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, Contract or other liability, charge or encumbrance upon any of its properties or other assets.
	5. Each Party agrees with each other Party that the provisions of this Condition shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
4. **Order of Precedence**
	1. NOT USED
	2. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
		1. The narrative Conditions of the Contract and Schedule 1 (Definitions)
		2. Schedule 11 (Licences to Occupy) and the DEFCONs incorporated

 into the Contract

* + 1. The System Requirement Document (SRD)
		2. The Statement of Work (SOW)
		3. The Contract Data Requirements listed in Schedule 9
		4. The Schedule of Requirements
		5. The remaining Schedules to the Contract
		6. The Contractor’s Proposal
		7. Any other documents expressly referred to in the Contract
	1. If either Partybecomes aware of any inconsistency within or between the documents referred to in Clause 5.2 such Party shall Notify the other Party forthwith in writing and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in Clause 5.2. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition 38 (Dispute Resolution).
1. **Amendments to Contract**
	1. All amendments to the Contract shall be serially numbered, in writing, issued only by the Authority’s Commercial representative, and agreed by both Parties.
	2. An amendment to the Contract shall come into force only when the Contractor has returned the DEFFORM 10B as an unqualified acceptance of the Authority’s offer.
	3. No amendment shall come into effect unless it satisfies Clauses 6.1 and 6.2 (inclusive) of this Condition 6.
	4. Where the Authority or the Contractor wishes to introduce a change, which is not minor, such as a change that is likely to change the Contract Price, the provision of Schedule 2 (Contract Change Procedure) shall apply. The Contractor shall not carry out work relating to a change until it has been agreed by both Parties in accordance with the process set out in Schedule 2 (Contract Change Procedure).
2. **Authority Representatives**
	1. Any reference to the Authority in respect of:
		1. The giving of consent;
		2. The delivering of any Notices, or;
		3. The doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

 shall be deemed to be references to the Authority's representatives named in the Appendix to Contract (DEFFORM 111).

* 1. The Authority’s representatives (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority’s representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
1. **Severability**
	1. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
		1. Such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and
		2. The Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.
2. **Waiver**
	1. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
	2. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.
3. **Assignment of Contract**
	1. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
4. **Third Party Rights**
	1. Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.
5. **Transparency**
	1. Subject to Clause 12.2 but notwithstanding Condition 13 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
	2. Before publishing the Transparency Information to the general public, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 3 (Contractor’s Commercially Sensitive Information).
	3. For the avoidance of doubt, nothing in this Condition 12 shall affect the Contractor’s rights in law.
6. **Disclosure of Information**
	1. Subject to Condition 12 and Clauses 13.4, 13.5 and 13.6.7 each Party:
		1. Shall treat in confidence all Information it receives from the other
		2. Shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract
		3. Shall not use any of that Information otherwise than for the purpose of the Contract and
		4. Shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
	2. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
		1. Is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract and
		2. Is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any Subcontract.
	3. The Contractor shall ensure that its employees are aware of the Contractor’s arrangements for discharging the obligations at Clauses 13.1 and 13.2 before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
	4. Clauses 13.1 and 13.2 shall not apply to any Information to the extent that either Party:
		1. Exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract.
		2. Has the right to use or disclose the Information in accordance with other Conditions of the Contract, or
		3. Can show:

(i) That the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties.

(ii) That the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract.

(iii) That the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure or

(iv) From its records that the same Information was derived independently of that received under or in connection with the Contract provided that the relationship to any other Information is not revealed.

* 1. Neither Party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Condition.
	2. The Authority may disclose the Information without prior written consent from the Contractor:
		1. To any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes
		2. To Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement
		3. To the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions
		4. On a confidential basis to a professional adviser, consultant or other person engaged by the Authority, for any purpose relating to or connected with the Contract
		5. On a confidential basis for the exercise of its rights under the Contract
		6. On a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract
		7. To any other economic operator, its advisors and lenders, for the purposes of a new procurement procedure
		8. As required and to the extent necessary to comply with the Freedom of Information Act 2000 (the “Act”) or the Environmental Information Regulations 2004 (the “Regulations”).
	3. Nothing in this Condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.
1. **Freedom of Information**
	1. The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority’s compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 14.2 to 14.8 (inclusive).
	2. Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as soon as reasonably practicable and in any event within five (5) Business Days after receiving a Request for Information and the Contractor shall:
		1. provide the Authority’s Commercial representative with a copy of all such Information in the form that the Authority’s Commercial representative requires as soon as reasonably practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) after the Authority’s request, and
		2. provide all necessary assistance as reasonably requested by the Authority’s Commercial representative in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations (as applicable).
	3. Following notification under Clause 14.2, and up until such time as the Contractor has provided the Authority’s Commercial representative with all the Information specified in Clause 14.2.1, the Contractor may make representations to the Authority’s Commercial Representative as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the Information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:
		1. whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations, and
		2. whether Information is to be disclosed in response to a Request for Information,

## and in no event shall the Contractor respond directly or allow its Subcontractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority’s Commercial representative.

* 1. The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least six (6) years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.
	2. The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Business Days after receiving such Request for Information.
	3. The Contractor acknowledges that any lists provided by their listing or outlining confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
	4. In the event of a request from the Authority pursuant to Clause 14.2 above the Contractor shall as soon as practicable, and in any event within five (5) Business Days after its receipt of such request, inform the Authority of the Contractor’s estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority’s own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the **Appropriate Limit**) the Authority shall inform the Contractor in writing whether or not the Authority still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with the Authority’s own FOIA policy from time to time.
	5. The Contractor acknowledges that (notwithstanding the provisions of Condition 13 (Disclosure of Information)) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part I of the Freedom of Information Act 2000 (the **Code**), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:
		1. In certain circumstances without consulting with the Contractor, or
		2. Following consultation with the Contractor and having taken its views into account, provided always that, where Clause 14.8.1 applies, the Authority’s Commercial representative shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.
1. **Publicity and Communications with the Media**
	1. The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract.
2. **Change of Control of Contractor**
	1. The Contractor shall notify the Authority at the address given in Clause 16.2, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Subcontractors. The Contractor shall not be required to submit any Notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a Notice.
	2. Each Notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

 Mergers & Acquisitions Section

 Strategic Supplier Management Team

 Spruce 3b # 1301

 MOD Abbey Wood,

 Bristol, BS34 8JH

* 1. The representative of the Authority will consider the Notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Effective Date of Contract.
	2. The Authority may terminate the Contract by giving written Notice to the Contractor in accordance with Clause 41.4.
	3. If the Authority exercises its right to terminate the Contract in accordance with Clause 16.4, the provisions of Clause 41.13 shall apply.
	4. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority’s rights set out in this Condition 16.
1. **Environmental Requirements**
	1. The Contractor shall in all its operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of it and its supply chain. The Contractor shall provide evidence in writing, of so doing to the Authority’s Project Manager on demand.
	2. In relation to the Sites:
		1. The Authority shall be liable to the Contractor and all third parties in respect of any contamination (including asbestos and polychlorinated biphenyls (“PCB’s”)) at, in, on or under the Sites and/or pollution from the Sites occurring prior to the occupation of the Sites by the Contractor
		2. The Contractor shall be liable to the Authority and all third parties in respect of any contamination at, in, on or under the Sites and/or pollution of the Sites occurring during the Contractor’s occupation of such Sites to the extent caused, released or aggravated by the acts or omissions of the Contractor
		3. Each Party (the “**First Party**”) shall indemnify the other Party in respect of all losses, costs and expenses and liabilities (including legal and professional costs) incurred by such other Party in relation to a risk which such First Party has accepted responsibility pursuant to Clauses 17.2.1 or 17.2.2 including (but for the avoidance of doubt not limited to) remedying any contamination at the Sites insofar as it is reasonable.
	3. The Contractor shall undertake a verification exercise of the phase 1 Land Quality Assessment (LQA) available at the Effective Date of Contract. The Contractor and the Authority shall review the findings and agree the baseline of the phase 1 LQAs within two (2) months of the Effective Date of Contract. This baseline LQA shall then be used for the purposes of comparison with the phase 1 LQA updates to be carried out by the Contractor, using the same procedures used by the Authority in producing the phase 1 LQAs available at the Effective Date of Contract, on hand back of the Sites to the Authority.
2. **Records and Information**
	1. The Contractor and its Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable Notice.
	2. The Contractor and its Subcontractors shall also permit access to relevant records that relate to the contractual obligations to provide the Contractor Deliverables under the Contract, held or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
		1. To enable the National Audit Office to carry out the Authority’s statutory audits and to examine and/or certify the Authority’s annual and interim report and accounts and
		2. To enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
	3. In respect of the records made available to the Authority under Clause 18.1 and subject to the provisions of Condition 13 (Disclosure of Information), the Contractor shall permit records to be examined and if necessary copied, by the Authority, or representative of the Authority, as the Authority may require.
	4. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least six (6) years from:
		1. The end of the Contract Term; or
		2. The date of termination of the Contract; or
		3. The date of final payment,

whichever occurs the latest.

* 1. The Contractor shall at all times:
		1. Maintain and keep up to date a full record of particulars of the costs of performing the Contractor Deliverables, including those relating to the design, construction, maintenance and operation of the Contractor Deliverable. Such records shall further include details of any commitments made by the Contractor for future expenditure and details of any funds held by the Contractor.
		2. When requested by the Authority’s Commercial representative, provide a summary of any of the costs referred to in Clause 18.5.1, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail together with explanations as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under the Contract.
		3. Provide such facilities as the Authority may reasonably require for the Authority and representatives of the Authority to visit any place where the records are held and examine the records maintained.
	2. The Contractor shall keep up to date (and where appropriate shall procure that the Subcontractors shall keep up to date) books of account in accordance with the Companies Act 1985 and United Kingdom Generally Accepted Accounting Principles with respect to the Contract showing in detail:
		1. Direct labour and indirect labour costs
		2. Overhead costs analyses to identify appropriate categories such as administrations
		3. Payment details made to Subcontractors and suppliers
		4. Expenditure not detailed above
		5. Third party usage and revenue, and
		6. Such other items as the Authority may reasonably require, to conduct cost audits for verification of cost expenditure or estimated expenditure.
	3. The Contractor shall have (and procure that the Subcontractors shall have) the books of account evidencing the items listed in Clauses 18.6.1 to 18.6.6 (inclusive) available for inspection by the Authority (and any expert) upon reasonable Notice and shall present a report of these to the Authority’s Commercial representative as and when requested.
	4. The Contractor shall maintain and keep up to date, or procure that the following are maintained and kept up to date:
		1. An asset register
		2. A full record of all incidents relating to health, safety and security which occur during the Contract Term
		3. Full records of all maintenance procedures carried out during the Contract Term, and
		4. All licences.
	5. The Contractor shall permit all records referred to in this Condition (the “**Required Records**)” to be examined and copied by or on behalf of the Authority and/or by or on behalf of by the Comptroller and Auditor General and his representatives.
	6. The Required Records shall be retained for a period of at least six (6) years after the end of the Contract Term.
	7. The Required Records relating to the Sites and all assets on Site(s) and the provision of the Contractor Deliverables shall be retained and provided to the Authority as set out in Schedule 9 (Contract Data Requirements List (CDRL)). The Contractor will control the documents referred to in Schedule 9 (CDRL) in the manner set out in that Schedule.
	8. Upon expiry or termination of the Contract, and in the event that the Authority wishes to enter into another Contract for the same Contractor Deliverables the Contractor shall (and shall ensure that the Subcontractors will) comply with all reasonable requests of the Authority’s Commercial representative, to provide information relating to the Contractor’s costs of operating and maintaining the service under the Contract.
	9. All information referred to in this Condition is subject to the obligations set out in Condition 13 (Disclosure of Information).
1. **Notices**
	1. A Notice served under the Contract shall be:
		1. In writing in the English Language.
		2. Authenticated by signature or such other method as may be agreed between the Parties.
		3. Sent for the attention of the other Party’s Commercial representative.
		4. Marked with the appropriate security classification and the Contract

number.

* + 1. Delivered by hand, prepaid post (or airmail) or by electronic mail.
	1. Notices shall be deemed to have been received:
		1. If delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery.
		2. If sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting.
		3. If sent by electronic means:
			1. If transmitted between 09:00 and 17:00 hours on a Business Day (recipient’s time) on completion of receipt by the sender of verification of the transmission from the receiving instrument or
			2. If transmitted at any other time, at 09:00 on the first Business Day (recipient’s time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.
1. **Progress Monitoring, Meetings and Reports**
	1. Progress monitoring, meetings and reports required under the Contract are set out in Schedule 4 (Governance) and in Schedule 9 (Contract Data Requirements List (CDRL)), which the Contractor shall be bound by.
2. **Supply of Contractor Deliverables and Quality Assurance**
	1. The Contractor shall provide the Contractor Deliverables to the Authority as set out in the Schedule of Requirements and by the dates or in the durations shown in Schedule 10 (Delivery) and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable the Contractor to comply with this obligation, and shall ensure that the Contractor Deliverables are delivered:
		1. In an economic, efficient, effective and safe manner and in accordance with the terms of the Contract
		2. In a manner that is not injurious to health and that does not cause damage to property
		3. In such manner as not to detract from the image and reputation of the Authority
		4. In compliance with all applicable Laws and Consents
		5. So as not to impede the Authority in carrying out its functions or increase the cost to the Authority of carrying out its functions and
		6. So as not to impede and so as to accommodate the MOD’s operational requirements.
	2. The Contractor shall discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
	3. The Contractor shall:
		1. Observe, and ensure that the Contractor’s team (including their suppliers and Subcontractors) observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority’s premises;
		2. Notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
		3. Before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.
	4. The provisions of this Condition 21 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
3. **Marking of Articles**
	1. If the Contractor supplies any article to meet their obligations in providing the Contractor Deliverables, each article shall be marked clearly and indelibly in accordance with the relevant requirements of Def Stan 05-132.
	2. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the article.
	3. The marking shall include any serial numbers allocated to the article.
	4. Where because of its size or nature it is not possible to mark an article with the required particulars, the required information shall be included on the package or carton in which the article is packed.
4. **Supply of Hazardous Materials or Substances**
	1. The Contractor shall provide to the Authority:
		1. For each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable), and
		2. For each article containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc., Act 1974, at the time of supply.
	2. Nothing in this Condition 23 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
	3. If an article contains hazardous materials or substances, or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:
		1. The Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority at the address shown in Clause 23.9.1, and
		2. The Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.
	4. If the Contractor is required, under, or in connection with the Contract, to supply articles or components of an article that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority’s Commercial representative a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide a SDS.
	5. No later than one (1) calendar month prior to the delivery date of an article, the Contractor shall provide to the Authority’s Commercial representative a completed Schedule 8 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract).
	6. If the article, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CHIP and / or the CLP Regulation 1272/2008 (whichever is applicable) and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
	7. If the article, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:
		1. Activity
		2. The substance and form (including any isotope)

* 1. If an article, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.
	2. Any SDS provided in accordance with this Condition 23 including any related information supplied in compliance with the Contractor’s statutory duties under Clause 23.1, any information arising from the provisions of Clauses 23.6, 23.7 and 23.8 and the completed Schedule 8 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract), shall be sent directly to the Authority’s Commercial representative as soon as practicable, and no later than one (1) month prior to the delivery date of the article. In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
		1. Hard copies to be sent to:

 Hazardous Stores Information System (HSIS)

 Defence Safety Authority (DSA)

 Movement Transport Safety Regulator (MTSR)

 Hazel Building Level 1, #H019

 MOD Abbey Wood (North)

 Bristol, BS34 8QW

* + 1. Emails to be sent to:

DSA-DLSR-MovTpt-DGHSIS@mod.uk

* 1. Failure by the Contractor to comply with the requirements of this Condition 23 shall be grounds for rejecting the affected article. Any withholding of information concerning hazardous articles, materials or substances shall be regarded as a Contractor Default for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority, or to terminate the Contract in accordance with Condition 41 (Contract Termination).
1. **Certificate of Conformity**
	1. The Contractor shall provide a Certificate of Conformity (CofC) in accordance with the applicable Quality Plan. One copy of the CofC shall be sent to the Authority’s Project Manager (Box 2 DEFFORM 111) upon delivery of the Contractor Deliverable to which the Certificate applies.
	2. The CofC shall be considered by the Contractor as a record and Condition 18 of the Contract shall apply.
	3. The information provided on the CofC shall include:
		1. Contractor name and address
		2. Contractor unique CofC reference number
		3. Contract number and where applicable Contract amendment number
		4. Details of any approved concessions
		5. Acquirer name and organisation
		6. Delivery address
		7. Contract item number from the Schedule of Requirements or elsewhere it is recorded in the Contract
		8. Description of the Contractor Deliverable including part number, specification and configuration status
		9. Identification marks, batch and serial number(s)
		10. Quantities
		11. A signed and dated statement by the Contractor that the Contractor Deliverable complies with the requirements of the Contract and any relevant approved concessions, and
		12. Exceptions or additions to the above are to be documented.
	4. Where the Quality Plan requires demonstration of traceability and design provenance through the supply chain, the Contractor shall include in any relevant Subcontract the requirement for the information called for at Clause 24.3. The Contractor shall ensure that this information is available to the Authority through the supply chain, upon request in accordance with Condition 18 of the Contract.
2. **Access to the Sites**
	1. As the provisions of Schedule 11 (Licences to Occupy) do not give the Contractor exclusive possession of the Sites, the Contractor shall provide to the Authority’s representatives relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to the Sites for the purpose of monitoring the Contractor’s progress and quality standards in performing the Contract.
	2. As far as reasonably practical, the Contractor shall ensure that the provisions of Clause 25.1. are included in their Subcontracts with those suppliers in their supply chain delivering the Contract. The Contractor shall arrange access to such Subcontractors as required.
3. **Transfer Regulations – Employee Transfer Arrangements on Exit**
	1. The Contractor shall be bound by the provisions set out in Schedule 6 (Transfer Regulation – Employee Transfer Arrangements on Exit) and the Admissions Agreement (AA) (Schedule 6, Part 3, Appendix 1).

26.2 The Authority may terminate this Contract at any time before the Expiry Date in the following circumstances:

26.2.1 If the Contractor does not enter into the Admission Agreement by 01 January 2022.

26.2.2 If the Contractor breaches the provisions of the Admission Agreement provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within twenty-eight (28) days of service of a notice from the Minister for the Cabinet Office setting out particulars of the breach and requiring the Contractor to remedy it;

26.2.3 If the Contractor breaches the provisions of Part 3 (Pension Matters) of Schedule 6 (Transfer Regulations) provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within twenty-eight (28) days of service of a notice from the Authority’s Commercial representative setting out particulars of the breach and requiring the Contractor to remedy it; or

26.2.4 Where notice to terminate the Admission Agreement has been served under clause 13.1 of the Admission Agreement.

1. **Acceptance**
	1. Acceptance of the Contractor Deliverables under Item numbers 1a, 1b and 3 of the Schedule of Requirements shall occur in accordance with the acceptance procedure specified in Schedule 17 (Test & Acceptance Procedures).
2. **Relief Events**
	1. If and to the extent that a Relief Event occurs directly and adversely affecting the ability of the Contractor to perform any of its obligations under this Contract, then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under Condition 41 (Contract Termination) and its obligations under this Contract.

## Procedure for Relief Event Claims

* 1. To obtain relief the Contractor shall:
		1. As soon as practicable, and in any event within ten [10] Business Days, after the Contractor becomes aware that the occurrence of the Relief Event has directly caused or is likely directly to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations, notify the Authority’s Commercial representative of the Contractor’s claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration.
		2. Within five [5] Business Days after service on the Authority’s Commercial representative of the Notice referred to in Clause 28.2.1, notify the Authority’s Commercial representative of full details of the relief claimed and demonstrate to the reasonable satisfaction of the Authority:
			1. That the Contractor and the Subcontractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure
			2. The need for relief from its obligations under this Contract
			3. That the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor or any Contractor Related Party acting in accordance with Good Industry Practice, without incurring material, additional expenditure and
			4. That the Contractor is using reasonable endeavors to perform its obligations under this Contract and
		3. Notify the Authority’s Commercial representative, if at any time it receives or becomes aware of any further information relating to the occurrence of the relevant Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
	2. If the Contractor has complied with its obligations under Clause 28.2, then, subject to Clause 28.4:
		1. The Contractor shall be entitled to such relief from its obligations provided under this Contract as is reasonable taking into account the likely effect of delay caused by the relevant Relief Event, and
		2. The Authority shall not be entitled to exercise its right to terminate this Contract under Condition 41 (Contract Termination) for any reason directly arising out of the occurrence of the Relief Event(s).

## Treatment of Payment Deductions

* 1. Nothing in Clause 28.3 shall affect any entitlement by the Authority to make Payment Deductions during the period in which a Relief Event falling within limbs (a) - (d) (inclusive) of the definition of the term “Relief Event” is subsisting, provided that any such Payment Deductions shall be disregarded for the purposes of the Authority's right to terminate this Contract under Condition 41 (Contract Termination).

## Late Provision of Notice or Information

* 1. If the information required by Clause 28.2 is provided after the dates referred to in that Clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

## Failure to Agree

* 1. If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure in Condition 38.
1. **Import and Export Licences**
	1. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import, or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.
	2. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority’s Commercial representative on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
		1. Ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
			1. The end user as: Her Britannic Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter “HM Government”) and
			2. The end use as: For the Purposes of HM Government and
		2. Include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
	3. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. For the purposes of this Condition 29, “materiel” shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
	4. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority’s Project Manager.
	5. During the Contract Term and for a period of up to two (2) years from expiry of the Contract, the Authority (in this instance the Authority’s Commercial representative) may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority (in this instance the Authority’s Commercial representative) makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
		1. The Contractor shall, or procure that their Subcontractor(s) shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) Business Days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties’ organisations, to include their respective export licensing subject matter experts and
		2. The Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

* 1. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
	2. Where the Authority invokes Clause 29.5 or 29.6, the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
	3. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both, the Contractor shall use reasonable endeavours to incorporate in each Subcontract equivalent obligations to those set out in this Condition 29. Where it is not possible to include equivalent terms to those set out in this Condition 29, the Contractor shall report that fact and the circumstances to the Authority’s Project Manager.
	4. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority’s Project Manager shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.
	5. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.
	6. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
		1. A non-UK export licence, authorisation or exemption or
		2. Any other related transfer or export control, that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the intellectual property-specific restrictions of the type referred to in Condition 30 under the sub-section Third Party Intellectual Property – Rights and Restrictions.
	7. If at any time during the Contract Term the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 29.11.1 or 29.11.2, they shall Notify the Authority’s Project Manager of this as soon as reasonably practicable by providing details in a DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
	8. If the information to be provided under Clause 29.11 has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 29.11.
	9. During the Contract Term, the Contractor shall Notify the Authority’s Project Manager as soon as reasonably practicable of any changes in the information notified previously under Clauses 29.11 or 29.12 of which it becomes or is aware that would affect the Authority’s ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority’s Project Manager.
	10. For a period of up to two (2) years from completion of the Contract and in response to a specific written request by the Authority’s Project Manager, the Contractor shall Notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 29.12 or 29.13 of which it becomes aware that would affect the Authority’s ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority’s Project Manager.
	11. Where following receipt of materiel from a Subcontractor or any of its other suppliers, restrictions are notified to the Contractor by that Subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority’s Project Manager by issuing an updated DEFFORM 528. Within ten (10) days of such notification, the Contractor shall propose to the Authority’s Project Manager actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority’s Project Manager shall Notify the Contractor within ten (10) days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
	12. If the restrictions prevent the Contractor from performing its obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the Contract, or to terminate the Contract in accordance with Clause 41.3.
	13. In the event that the restrictions notified to the Authority pursuant to Clause 29.11 were known or ought reasonably have been known by the Contractor (but were not disclosed) at Effective Date of Contract or if restrictions notified to the Authority pursuant to Clauses 29.14 or 29.15 were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 29.12, termination under Clause 29.17 will be in accordance with Clause 41.3 and the provisions of Clause 29.21 will not apply.
	14. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 29.10, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
	15. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority’s Project Manager shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
	16. Where:
		1. Restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clauses 29.18or both, or
		2. Any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate:

The Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of Condition 6 (Amendments to Contract) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of Condition 43 (Termination for Convenience).

* 1. Pending agreement of any amendment to the Contract as set out in Clauses 29.17 or 29.20, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information, and the Key Performance Indicators (KPIs) set out in Schedule 14 (Performance Measurement) associated with those elements will not be enforced by the Authority during that period.
1. **Intellectual Property Rights (IPR)**
	1. The Authority hereby grants to the Contractor for the duration of this Contract a worldwide, royalty free, non-exclusive licence to use the Authority IP for the purpose of providing the Contractor Deliverables. Each such licence shall carry the right to grant sub-licences mutatis mutandis as the licence granted in this Clause 30.1.
	2. The Contractor shall (both during and after the term of this Contract) make available to the Authority free of charge and hereby grants to the Authority an irrevocable, royalty free, non-exclusive, world-wide licence to use the Project Data for the Approved Purposes. The Contractor shall ensure that the Contractor obtains all necessary licences, permissions and consents to ensure that the Contractor can make the Project Data available to the Authority on these terms, for the Approved Purposes. The Authority shall be permitted to grant sub-licences on the same terms mutatis mutandis as those of the licence granted by the Contractor to the Authority under this Clause 30.2 and the licence granted under this Clause 30.2 shall be transferable to third parties who assume responsibility for the provision of the Contractor Deliverables, or works or services similar thereto.
	3. The Contractor shall (both during and after the term of this Contract) make available to the Authority free of charge and hereby grants to the Authority an irrevocable, royalty free, non-exclusive, world-wide licence to use the Contractor IP for the Approved Purposes. The Contractor shall ensure that the Contractor obtains all necessary licences, permissions and consents to ensure that the Contractor can make the Contractor IP available to the Authority, on these terms, for the Approved Purposes. The Authority shall be permitted to grant sub-licences on the same terms mutatis mutandis as those of the licence granted by the Contractor to the Authority under this Clause 30.3 and the licence granted under this Clause 30.3 shall be transferable to parties who assume responsibility for the provision of the Contractor Deliverables, or works or services similar thereto.
	4. The Contractor shall use its reasonable endeavours to procure for the Authority (at the Contractor’s expense) a non-exclusive licence to use and have used on its behalf by a third party the Third-Party IP for the Approved Purposes on the relevant third party’s standard licensing terms.
	5. The Contractor shall use all reasonable endeavours to ensure that any Intellectual Property Rights (“IPR”) created, brought into existence or acquired during the term of this Contract vest, and remain vested throughout the term of this Contract, in the Contractor and the Contractor shall enter into appropriate agreements with any Contractor Related Party (or other third parties) that may create or bring into existence, or from which it may acquire, any IPR. The provisions of this Clause 30.5 shall not apply to moral rights, which are not transferable.
	6. Without prejudice to the generality of Clauses 30.2, 30.3 or 30.4, to the extent that any of the Project Data is generated by or maintained on a computer or similar system, the Contractor shall procure for the benefit of the Authority, at no charge the grant of a licence or sub-licence for any relevant software to enable the Authority or its nominee to access and otherwise use such data for the Approved Purposes.
	7. In the event that any Contractor Related Party owns any software used in the provision of the Contractor Deliverables, (“Contractor Software”) the Contractor shall notify the Authority. Within twenty-one (21) days of such Notice (unless otherwise stated by the Authority’ Commercial representative) the Contractor shall (or shall procure that the relevant Contractor Related Party shall) enter into the National Computing Centre Limited’s then current standard single licensee escrow deposit agreement in relation to the Contractor Software in accordance with Clause 30.8.
	8. The Contractor shall pay all fees required in accordance with the single licensee agreement referred to in Clause 7 above in accordance with the terms of such agreement. If the Contractor fails to pay any such fees, the Authority may pay them, and any sums so paid by the Authority shall immediately become due and payable to the Authority by the Contractor, and the Authority shall also be entitled to deduct such sums from any sums due or which may become due to the Contractor. The Contractor shall, at his own expense, place the source code of the Contractor Software and all material related to such source code which is necessary for the Authority’s effective use of such source code (including, without limitation, any specification, designs and working papers), on machine readable and hard copy media, with the National Computing Centre Limited in accordance with the terms of the single licensee agreement referred to above. The Contractor shall keep the Authority fully up to date as to the procedures the Contractor has in place for making updates to each item of source code.
	9. The Contractor shall ensure the back-up and storage in safe custody of the Project Data referred to in Clause 30.6 in accordance with Good Industry Practice. Without prejudice to this obligation, the Contractor shall from time to time on reasonable request submit to the Authority’s Commercial representative for approval its proposals for the back-up and storage in safe custody of such Project Data and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. The Contractor shall comply, and shall cause all Contractor Related Parties to comply, with all procedures to which the Authority’s Commercial representative has given his approval. The Contractor may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Authority’s Commercial representative, who shall be entitled to object on the basis set out above.
	10. The Contractor shall indemnify the Authority and keep the Authority fully and effectively indemnified against any and all Losses, which the Authority may sustain or incur or which may be brought or established against the Authority or any of its permitted sub-licensees and which in any case arise out of or in relation to or by reason of any claim or allegation that the use by the Authority or by its permitted sub-licensees of the Project Data or Contractor IP, in accordance with the terms of the licence granted under Clauses 30.2 or 30.3 respectively, infringes any IPR of any third party, PROVIDED ALWAYS that the Authority or its permitted sub-licensees only uses the Project Data or Contractor IP in accordance with the terms of Clause 30.2 or 30.3 respectively.
	11. The Contractor shall indemnify the Authority and keep the Authority fully and effectively indemnified against any and all Losses which the Authority may sustain or incur or which may be brought or established against the Authority which arise out of any use of the Authority IP by the Contractor other than in accordance with Clause 30.1.
	12. The Contractor shall indemnify the Authority and keep the Authority fully and effectively indemnified against all reasonable costs and expenses incurred by the Authority in procuring a licence to use the Third-Party IP in the event that the Contractor fails to procure a licence in favour of the Authority in accordance with Clause 30.4.
	13. The Authority shall indemnify the Contractor and keep the Contractor fully and effectively indemnified against any and all Losses which the Contractor may sustain or incur, or which may be brought or established against the Contractor or any of its permitted sub-licences and which, in any case, arise out of or in relation to or by reason of any claim or allegation that the use by the Contractor or by its permitted sub-licencees in accordance with the terms of the licence granted under Clause 30.1, infringes any IPR of any third party.
	14. The Authority shall indemnify the Contractor and keep the Contractor fully and effectively indemnified against any and all Losses which the Contractor may sustain or incur or which may be brought or established against the Contractor which arise out of any use of the Contractor IP or the Project Data by the Authority other than in accordance with Clause 30.2 or 30.3 respectively.
	15. The indemnities in Clauses 30.10 to 30.14 should not apply to the extent that:
		1. The indemnified party uses the IPR in question beyond the scope of its licence
		2. The claim arises as a direct result of the indemnified party acting on the specific instruction of the indemnifying party to continue using the IPR in question notwithstanding an allegation by a third party that such use involves an infringement of that third party’s rights
		3. The claim arises from the negligence or wilful misconduct of the indemnified party, its employees, agents or contractors, or
		4. The claim arises from the default of the indemnified party.
	16. For the purposes of Clauses 30.10 to 30.14 the indemnified party shall promptly notify the indemnifying party when it becomes aware of any IPR infringement being brought or any IPR infringement arising.
	17. Any claim for IPR infringement brought shall be managed by the indemnifying party at its own expense.
	18. The indemnified party shall, at the request of the indemnifying party, assist the indemnifying party in the management of any claim of IPR infringement and where the indemnified party does so assist:
		1. The indemnifying party shall reimburse the indemnified party for any costs and expenses incurred in doing so, and;
		2. The indemnified party shall not make any admissions which could be prejudicial to the defence or settlement of such claim (or could increase the indemnifying party’s liability) without first consulting with the indemnifying party.
	19. Where any claim for IPR infringement is brought, and is successful, the indemnifying party may (at its own expense) either:
		1. Modify the IPR in question so as to avoid the infringement or the alleged infringement, provided that:
			1. The performance and functionality of the substituted IPR shall be equivalent to the performance and functionality of the original IPR, and;
			2. The terms of this Contract shall apply to the substituted IPR as they applied to the original IPR, or;
		2. Procure a licence to enable the indemnified party to use the IPR in questions for the purposes of this Contract without incurring any liability for IPR infringement.

1. **NOT USED**
2. **Contract Price**
	1. The prices under the Contract for years 1 to 3 are Firm and the prices for years 4 onwards are Fixed as shown in the Schedule of Requirements and Appendices thereto. The Fixed prices will be subject to the provisions of Condition 33 (Variation of Price (VOP)).
	2. The prices shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.
3. **Variation of Price (VOP)**
	1. The Fixed prices are fixed at June 2021 price levels and do not include provision beyond this date for increases or decreases in the market price of the Contractor Deliverables being delivered.  Any such variation shall be calculated in accordance with the following formula:

V = P (a+b(Oi/O0)) - P

 *Where:*

 V represents the variation of price

 P represents the FIXED price as stated in the Schedule of Requirements

 O represents the index PPI Output – All Services – K8ZU

O0 represents the quarterly average of Index K8ZU All Services GSO (SIC 2007) Output across the financial year preceding the contract award date.

 Oi represents the quarterly average of Index K8ZU All Services GSO (SIC 2007) Output across the financial year prior to the period for which variation is being added

 a represents the Non-Variable Element (NVE)

 b represents the Variable Element

 a+b=1

* 1. The index referenced to in Clause 33.1 of this Condition shall be taken from the following tables:

OUTPUT Price Index - e.g. ONS Publication MM22 Table 2 'Price Indices of UK OUTPUT: All Manufacturing and Selected Industries', or, Table 4 'Price Indices of Products Manufactured in the UK'.

* 1. Indices published with a ‘B’ or ‘F’ marker, or a suppressed value, in the last three (3) years are not valid for Variation of Price and shall not be used. Where the price index has an ‘F’ marker or suppression applied to it during the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.
	2. In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the Contract and before final adjustment of the final Contract Price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.
	3. In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Clause 33.4) shall then be applied.
	4. Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy.  Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.
	5. The Contractor shall notify the Authority’s Commercial representative of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both Parties may consider whether any change in this provision would be appropriate.
	6. The Fixed prices shall be adjusted taking into account the effect of the formula set out in Clause 33.1 as soon as possible after publication of the relevant indices or at a later date if so agreed between the Parties.  Where an index value is subsequently amended, the Parties shall agree a fair and reasonable adjustment to the price, as necessary.
1. **Payment and Recovery of Sums Due**
	1. Payment under the Contract will be made by electronic transfer and prior to submitting any invoices for payment the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
	2. Where the Contractor submits an invoice to the Authority, the Authority will consider and verify that invoice in a timely fashion.
	3. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
	4. Where the Authority fails to comply with Clause 34.2 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of Clause 34.3 after a reasonable time has passed.
	5. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor’s obligations nor as a waiver of its rights and remedies under the Contract.
	6. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other Contract with the Authority, or with any other Government Department.
	7. Payments and any Payment Deductions, made by the Authority to the Contractor for work under the Contract, shall be made by the Authority as set out in Schedule 16 (Payment).
2. **Value Added Tax**
	1. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the Contractor Deliverables by the Contractor to the Authority.
	2. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
	3. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and none of the Authority’s representatives) in cases of doubt. The Contractor shall Notify the Authority’s Commercial representative of the Authority’s VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority’s Commercial representative, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority’s Commercial representative within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling, it shall supply to the Authority’s Commercial representative a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
	4. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
	5. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) days of a written request for payment of any such sum by the Contractor.
	6. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor’s input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with Condition 38 (Dispute Resolution).
	7. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 35.2, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority’s Commercial representative a copy of all correspondence between HMRC and the Contractor’s advisors regarding the VAT assessment within three (3) Business Days of a written request for such correspondence.
3. **Debt Factoring**
	1. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 10 (Assignment of Contract), the Contractor may assign to a third party (“the **Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 (“the Act”)). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 36 shall be subject to:
		1. Reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 34.6,
		2. All related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid and
		3. The Authority receiving notification under both Clauses 36.2 and 36.3.2.
	2. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Clause 36.1, the Contractor shall Notify the Authority’s Commercial representative in writing of the assignment and the date upon which the assignment becomes effective.
	3. The Contractor shall ensure that the Assignee:
		1. Is made aware of the Authority’s continuing rights under Clauses 36.1.1 and 36.1.2 and
		2. Notifies the Authority of the Assignee’s contact Information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with Clauses 36.1.1 and 36.1.2.
	4. The provisions of Condition 34 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority’s Commercial representative.
4. **Subcontracting and Prompt Payment**
	1. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor’s obligations, duties or liabilities under the Contract.
	2. Where the Contractor enters into a Subcontract it shall cause a term to be included in such Subcontract:
		1. Providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
		2. Providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
		3. Providing that where the Contractor fails to comply with Clause 37.2.1, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of Clause 37.2.2 after a reasonable time has passed; and
		4. Requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as Clauses 37.2.1 to 37.2.4 (inclusive).
5. **Dispute Resolution**
	1. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
	2. In the event that the dispute or claim is not resolved pursuant to Clause 38.1 the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 38.2 shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
	3. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.
6. **Liquidated Damages**
	1. It is recognised by the Parties that if the Contractor fails to achieve the In-Service Date (ISD) by the date specified in Schedule 10 (Delivery), the Authority will suffer loss and damage.
	2. Accordingly, for each completed calendar month’s delay the Contractor shall pay the Authority £1,000,000 (one million pounds) up to a maximum of £6,000,000 (six million pounds) as Liquidated Damages. The Parties confirm that this sum represents a genuine pre-estimate of the Authority’s loss.
	3. The provisions of this Condition are without prejudice to any other rights of the Authority under the Contract, including but not limited to those under Conditions 378, and 41. Accordingly, in the event that the Authority terminates the Contract, Liquidated Damages shall be payable until the date of such termination.
	4. Unless expressly stated by the Authority in writing, the provisions of Condition 9 (Waiver) shall apply to the Authority’s right to recover Liquidated Damages under this Condition.
7. **Force Majeure Events and Consequences**
	1. On the occurrence of a Force Majeure Event the Affected Party shall notify the other Party (in respect of the Authority the Contractor shall notify the Authority’s Commercial representative) to such effect as soon as practicable. Furthermore, if either reasonably anticipates the occurrence of a Force Majeure Event, it shall notify the other Party to such effect as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of each or the Affected Party or (in the case of an anticipated Force Majeure Event) each or the likely Affected Party and any action proposed to mitigate its effect.
	2. As soon as practicable following such notification the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
	3. The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which the Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
	4. Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses (whatsoever) or damages incurred by that other Party to the extent a Force Majeure Event occurs, and the Affected Party is prevented from carrying out obligations by that Force Majeure Event. Without prejudice to Clauses 40.5 , the Authority shall not be entitled to terminate this Contract on the basis of Contractor Default pursuant to Clause 41.3 to the extent that any event identified in the definition of Contractor Default arises from the occurrence of a Force Majeure Event.
	5. Subject to the operation of Clause 40.8.1 (which shall only apply in the circumstances identified in Clause 40.8 and not otherwise):
		1. (where the Contractor is the Affected Party) the Contractor shall be granted relief from any Payment Deduction(s) arising from any Key Performance Indicator Shortfall(s) arising directly and solely to the occurrence of the relevant Force Majeure Event or Force Majeure Events during the period commencing on the date of its or their occurrence and terminating at 17:00 (London time) on the 60th (sixtieth) Business Day after and including such commencement date as long as the Contractor shall have complied with and continues to comply with its obligations pursuant to Clauses 40.1, 40.2 and 40.3. Nothing in this Clause 40.5.1 shall operate to affect the Authority’s entitlement to make Payment Deductions:
			1. Where and to the extent that the Contractor’s delivery of any Contractor Deliverable is not adversely affected by the Force Majeure Event, or;
			2. To the extent relating to the occurrence of any KPI Shortfall(s) prior to the commencement of or after the end of such period.
		2. Subject to Clause 40.5.1, nothing in this Condition 40 shall affect the Authority’s entitlement to make Payment Deductions in the period during which the Force Majeure Event is subsisting.
	6. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

## Termination on the basis of (a) Force Majeure Event(s)

* 1. If no terms pursuant to Clause 40.2 are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event(s) and such Force Majeure Event(s) is/are continuing or its/their consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty (120) Business Days, then either Party (the **“Notifying Party”**) may give the other Party’s representative (for the avoidance of doubt this shall be the Authority’s Commercial representative) no less than twenty (20) Business Days’ written Notice (such written Notice period being the “**FM Period”**) that the Notifying Party wishes this Contract to terminate on the basis of the occurrence of such Force Majeure Event(s) at the end of the FM Period.
	2. If the Contractor gives Notice to the Authority’s Commercial representative under Clause 40.7 that the Contractor wishes the Contract to terminate, then the Authority has the option either to accept such termination or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Contract to continue. If the Authority’s Commercial representative gives the Contractor such Notice of continuance, then:
		1. Clause 40.5 shall cease to apply and the Authority shall pay to the Contractor the Contract Price from the date on which this Contract would have terminated under Clause 40.7, as if the Contractor Deliverable(s) were being provided in full (save that, where and to the extent the Contractor’s delivery of any Contractor Deliverable is not affected by the Force Majeure Event(s), nothing in this Clause 40.8.1 shall operate to affect the Authority’s entitlement to make Payment Deductions in the period during which the Force Majeure Event is subsisting), and
		2. The Contract shall not terminate on the basis of the occurrence of such Force Majeure Event(s).
	3. If:
		1. The Contractor gives notice to the Authority’s Commercial representative under Clause 40.7 that the Contractor wishes this Contract to terminate on the basis of the occurrence of such Force Majeure Event(s) and the Authority accepts such termination in writing, or
		2. The Authority’s Commercial representative gives the Contractor no less than twenty (20) Business Days written Notice that the Authority wishes this Contract to terminate on the basis of the occurrence of such Force Majeure Event(s),

This Contract shall terminate on such basis at the end of the relevant notice’s FM Period.

## Financial Consequences of Termination for a prolonged Force Majeure Event

* 1. Where the Authority terminates this Contract pursuant to this Condition 40, the Contractor shall only be entitled to be paid (to the extent not already recovered) an amount equal to those Contract Prices (subject to any other provision of the Contract affecting the level of such payment) for those Contract Deliverables which it has, as at the Termination Date, provided to the Authority in accordance with the provisions of this Contract minus any amount(s) due and owing, but remaining unpaid, by the Contractor to the Authority pursuant to this Contract (and the Contractor hereby acknowledges and agrees that where any such amount so due and owing to the Authority exceeds the amount of those Contract Prices the Contractor shall pay to the Authority an amount equal to such excess on or before the Termination Date). The Contractor shall not be entitled to any other amount in connection with such termination.
1. **Contract Termination (other than a Force Majeure Event Based Termination)**
	1. The Authority shall be entitled to terminate this Contract in accordance with:
		1. Clause 41.2 and/or
		2. Clause 41.3.

## Break (Voluntary Termination by the Authority)

* 1. The Authority shall be entitled to terminate this Contract pursuant to Condition 43 (Termination for Convenience).

## Fault Based / Insolvency Based Termination

* 1. The Authority shall be entitled to terminate the whole or any part of this Contract by giving Notice in writing to the Contractor if any one or more of the following events happens:
		1. Subject to Clauses 41.9 to 41.11 (inclusive)(Rectification), if the Contractor commits a Contractor Default, and/or
		2. The Authority is entitled to terminate pursuant to:
		3. Condition 26 (Transfer Regulations);
		4. Condition 42 (Termination for Insolvency and Corrupt Gifts);
		5. Condition 44 (Termination for Prohibited Acts);
		6. DEFCON 659A (Security Measures);
		7. DEFCON 660 (Official-Sensitive Security Requirements) and/or
	2. If the Authority wishes to terminate the whole or any part of this Contract pursuant to Clause 41.3, it shall serve a Notice on the Contractor stating:
		1. That the Authority is terminating the Contract pursuant to Clause 41.3, and
		2. The ground(s) for termination, giving reasonable details, and
		3. That the Contract shall (subject to Clauses 41.9 to 41.11 (Rectification)) terminate on the day falling thirty (30) Business Days after the date the Contractor receives the Termination Notice.

## Persistent Breach

* 1. If a particular breach (other than a breach for which Payment Deductions have or could have been made) by the Contractor has continued for more than sixty (60) Business Days or occurred more than three (3) times in any three (3) month period, then the Authority’s Commercial representative may serve a Notice on the Contractor:
		1. Specifying that it is a formal warning notice, and
		2. Giving reasonable details of the breach, and
		3. Stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.
	2. If, following service of such a warning notice the breach specified has continued beyond thirty (30) days or recurred in one (1) or more months within the six (6) month period after the date of service of the warning notice, then the Authority's Commercial representative may serve another Notice (a **Final Warning Notice**) on the Contractor:
		1. Specifying that it is a Final Warning Notice, and
		2. Stating that the breach specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice, and
		3. Stating that, if such breach continues for more than thirty (30) days or recurs in one (1) or more months within the six (6) month period after the date of service of the Final Warning Notice, this Contract will be terminated.
	3. A warning notice may not be served in respect of any incident of breach which has previously been counted in the award of a separate warning notice.
	4. If the breach continues for more than thirty (30) days or recurs in one (1) or more months within the six (6) month period after the date of service of the Final Warning Notice, it shall constitute a **Persistent Breach**.

## Rectification

* 1. If the Contractor commits a Contractor Default (other than a Persistent Breach or a Contractor Default identified in limbs (e), (f), (g), (h) or (i) of the definition of that term (provided in Schedule 1 (Definitions in the Contract)) and further to the Authority’s issue of its Notice in accordance with Clause 32.1.1 such breach is capable of being rectified or remedied, the Contractor shall, in consultation with the Authority’s Commercial representative, have the opportunity to set out within three (3) Business Days after the date of the Authority’s Notice how the Contractor intends to remedy such a breach (such proposal to be reasonably acceptable to the Authority).
	2. If no such proposal for rectification reasonably acceptable to the Authority is received by the Authority’s Commercial representative within three (3) Business Days after the date of the Authority’s Termination Notice, then the Authority may terminate this Contract in accordance with Clause 41.12.
	3. If a proposal for rectification reasonably acceptable to the Authority is received by the Authority’s Commercial representative within three (3) Business Days after the date of the Authority’s Termination Notice, the Contractor shall remedy the relevant Contractor Default within thirty (30) Business Days after the date of the Authority’s Termination Notice. At the expiry of that period:
		1. If the Contractor has failed to rectify, or cause to be rectified, the Contractor Default to the satisfaction of the Authority, then the Authority may terminate this Contract in accordance with Clause **41.12**, or
		2. If the Contractor has rectified, or has caused to be rectified, the Contractor Default to the satisfaction of the Authority, then the Authority shall issue a Notice to such effect, whereupon the Authority’s Termination Notice in respect of the relevant Contractor Default alone shall be deemed withdrawn.

## Termination Date for a Fault Based / Insolvency Based Termination

* 1. Following the issue of a Termination Notice pursuant to Clause 32.1.1 this Contract or the relevant part thereof shall (subject to Clauses 41.9 to 41.11 (inclusive) ) terminate thirty (30) Business Days after (and including) the date of the Termination Notice.

## Financial Consequences of Termination for a Fault Based / Insolvency Based Termination

* 1. Where this Contract is terminated in full pursuant to Clause 41.3:
		1. The Contractor shall not be entitled to payment of any amount by way of compensation or otherwise in respect of such termination, or in respect of any part of the Contractor Deliverables which has not been performed, or which had been performed prior to such termination which is contrary to any direction in writing by the Authority’s Commercial representative or to any specific provision of this Contract.
		2. Subject to the provisions of Clause 41.13.1:

(a) the Contractor shall be entitled to claim an amount equal to those payments for the services and Contractor Deliverables provided to the Authority up to the Termination Date **net** of any applicable Payment Deductions, and

(b) subject to the limitation of liability provided in Clause 56.1.1, the Authority shall be entitled to claim, and the Contractor shall pay on or before the Termination Date, an amount calculated in accordance with the following formula:

**A** plus **B**

Where:

**A** = the aggregate of all Termination Costs, and

**B** = any amount(s) due or owing, but remaining unpaid, by the Contractor to the Authority pursuant to this Contract

(c) where the amount calculated under Clause 41.13.2(a) exceeds the amount calculated, determined or otherwise assessed under Clause 41.13.2(b), the Authority shall pay to the Contractor an amount equal to the balance on or before the Termination Date, and

* + 1. (d) where the amount calculated, determined or otherwise assessed under Clause 41.13.2(b) exceeds the amount calculated under Clause 41.13.2(a), the Contractor shall pay to the Authority an amount equal to the balance on or before the Termination Date. Where the Authority is entitled to terminate this Contract pursuant to Condition 44 (Termination for a Prohibited Act*)*, the Authority shall be entitled to:
			1. Recover from the Contractor the amount of any loss resulting from such termination
			2. Recover from the Contractor the amount or value of any gift, consideration or commission entailed by such Prohibited Act, and
			3. Where this Clause 41.13.3.3 applies but this Contract has not been terminated, to recover from the Contractor any other loss sustained as a result of such Prohibited Act, and any recovery action taken against any employee of the Authority shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause 41.13.3.3.
1. **Termination for Insolvency or Corrupt Gifts**

Insolvency

* 1. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:
	2. Where the Contractor is an individual or a firm:
		1. The application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986, or
		2. The court making an interim order pursuant to Section 252 of the Insolvency Act 1986, or
		3. The individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors, or
		4. The presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation, or
		5. The court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm, or
		6. Where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

42.2.6.1 It has failed to comply with or to set aside a statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the statutory demand on it or

42.2.6.2 Execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

* + 1. The presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation, or
		2. The court making an award of sequestration in relation to the Contractor’s estates.
	1. Where the Contractor is a company registered in England:
		1. The presentation of a petition for the appointment of an administrator unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation, or
		2. The court making an administration order in relation to the company or
		3. The presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation or
		4. The company passing a resolution that the company shall be wound-up, or
		5. The court making an order that the company shall be wound-up, or
		6. The appointment of a Receiver or manager or administrative Receiver.
	2. Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in Clauses 42.3.1 to 42.3.6 (inclusive).
	3. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

Corrupt Gifts

* 1. The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):
		1. Offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:

42.6.1.2 For doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of the Contract or any other contract with the Crown, or

42.6.1.3 For showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

* + 1. Enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
	1. If the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 -1916 or under sub sections 108 -109 of the Anti-Terrorism, Crime and Security Act 2001 before those Acts or sub sections are revoked, or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to the Contract or any other contract with the Crown, the Authority shall be entitled:
		1. To terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination
		2. To recover from the Contractor the amount or value of any such gift, consideration or commission and
		3. To recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.
	2. In exercising its rights or remedies under this Condition, the Authority shall:
		1. 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
		2. Give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

42.8.2.1 Requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf

42.8.2.2 Requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

* 1. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition 42.
1. **Termination for Convenience**
	1. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written Notice. Upon expiry of the Notice period, the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the Parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.
	2. Following any Notification specified in Clause 43.1, the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:
		1. Not start work on any element of the Contractor Deliverables not yet started
		2. Complete in accordance with the Contract the provision of any element of the Contractor Deliverables
		3. As soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible
		4. Terminate on the best possible terms any Subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under Clauses 43.2.2 and 43.2.3.
	3. Where this Condition applies (and subject always to the Contractor’s compliance with any direction given by the Authority under Clause 43.2):
		1. The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables that are:

43.3.1.1 In the possession of the Contractor at the date of termination and

43.3.1.2 Provided by or supplied to the Contractor for the performance of the Contract.

* + 1. The Contractor shall deliver to the Authority within an agreed period, or in the absence of such agreement within a period as the Authority’ Project Manager may specify, a list of:

43.3.2.1 All such unused and undamaged materiel and

43.3.2.2 Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority’s Commercial representative.

* + 1. In respect of Contractor Deliverables, the Authority shall pay the Contractor fair and reasonable prices for each Contractor Deliverable performed, or partially performed, in accordance with the Contract.
	1. The Authority shall (subject to Clause 43.5 and to the Contractor’s compliance with any direction given by the Authority in Clause 43.2) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:
		1. The Contractor taking all reasonable steps to mitigate such loss, and
		2. The Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.
	2. The Authority’s total liability under the provisions of this Condition shall be limited to the total price payable under the Contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
	3. The Contractor shall include in any Subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the Subcontract under the terms of Clauses 43.1 to 43.5 except that:
		1. The name of the Contractor shall be substituted for the Authority except in Clause 43.3.1;
		2. The Notice period for termination shall be as specified in the Subcontract, or if no period is specified twenty (20) Business Days, and;
		3. The Contractor’s right to terminate the Subcontract shall not be exercised unless the Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 43.

 Claims for payment under this Condition shall be submitted in accordance with the Authority’s Commercial representative’s written direction.

1. **Termination for Prohibited Acts**
	1. For the purposes of this Condition 44 Subcontractor means a Subcontractor to the Contractor, a Subcontractor of a Subcontractor to the Contractor, and any other Subcontractor of whatever tier involved in provision of the Contractor Deliverables.
	2. If the Authority wishes to terminate this Contract because the Contractor or any Subcontractor (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, the Authority’s Commercial representative shall serve a Termination Notice on the Contractor stating:
		1. The nature of the Prohibited Act unless, in the case of a breach of security, a Senior Civil Servant in its absolute discretion considers that disclosure of the nature of the breach of security is not in the interests of national security, and
		2. The identity of the party whom the Authority believes has committed the Prohibited Act, and
		3. The date on which this Contract shall terminate in accordance with Clauses 44.3 to 44.8 (inclusive).
	3. In this Clause 44.3, the expression "not acting independently of" (when used in relation to the Contractor or a Subcontractor (of whatever tier)) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Contractor or the Subcontractor (as the case may be).
	4. Notwithstanding Clauses 44.5 to 44.8 (inclusive), if a Prohibited Act is committed by the Contractor or by an employee of the Contractor not acting independently of the Contractor, then the Authority may terminate this Contract by the Authority’s Commercial representative giving Notice to the Contractor.
	5. If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may Notify the Contractor of termination and this Contract shall terminate, unless within twenty [20] Business Days of receipt of such Notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Contractor Deliverable by another person.
	6. If the Prohibited Act is committed by a Subcontractor (of whatever tier) or by an employee of such person not acting independently of that Subcontractor, then the Authority’s Commercial representative may notify the Contractor of termination and this Contract shall terminate, unless within twenty[20] Business Days of receipt of such Notice the Contractor terminates the relevant appointment and procures the performance of such part of the Contractor Deliverables by another person.
	7. If the Prohibited Act is committed by an employee of a Subcontractor (or whatever tier) acting independently of that person, then the Authority may Notify the Contractor of termination and this Contract shall terminate, unless within twenty [20] Business Days of receipt of such Notice the Subcontractor terminates the employee’s employment and (if necessary) procures the performance of such part of the Contractor Deliverable by another person.
	8. If the Prohibited Act is committed by any other persons not specified in Clauses 44.5 to 44.7 (inclusive), the Authority’s Commercial representative may Notify the Contractor of termination and this Contract may terminate, unless within twenty [20] Business Days of receipt of such Notice the Contractor procures the termination of such person’s employment and of the appointment of their employer (where not employed by the Contractor or any of the Subcontractors) and (if necessary) procures the performance of such part of the Contractor Deliverables by another person.
2. **Consequences of Termination**
	1. The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.
3. **Government Furnished Assets (GFA)**
	1. The Authority shall make available the GFA as set out in Schedule 7 (Government Furnished Assets) free of charge for the use of the Contractor in the performance of its obligations under the Contract.
	2. The Authority shall have no liability to the Contractor if, when the GFA is made available or offered to be made available on the agreed date, the Contractor fails to make use of all or any part of such GFA. The Contractor shall indemnify the Authority in respect of any additional costs properly incurred in such circumstances including in particular the costs of making such GFA available at a later date.
	3. All GFA shall remain the property of the Authority. It shall be used for the purposes of the Contract and for no other purpose, without the prior approval in writing of the Authority’s Commercial representative.
	4. Neither the Contractor, nor any Subcontractor, nor any other person, shall have a lien on any GFA, for any sum due to the Contractor, Subcontractor or other person, and the Contractor shall take all reasonable steps to ensure that the title of the Authority and the exclusion of any such lien are brought to the notice of all Subcontractors and other persons dealing with any GFA.
	5. The Contractor acknowledges that GFA is supplied by the Authority on an “as is” basis and the Authority makes no representations or warranty as to its condition, quality or suitability for any purpose. The Contractor shall satisfy itself in relation to each item of GFA as to whether it is suitable for use in providing the Contractor Deliverables under the Contract.
	6. The Contractor shall notify the Authority’s Commercial representative in writing, together with an impact statement, within thirty (30) days of receipt by the Contractor (or as otherwise agreed between the Parties) where any GFA:
		1. Does not correspond with the GFA list and/or
		2. Is defective or deficient and not capable of use for the required purpose

 and return the item of GFA to the Authority together with details of the discrepancies, defects or deficiencies discovered and await instructions.

* 1. The Contractor shall, upon receipt of any item of GFA, ensure that throughout the Contract Term such items are only used by the Contractor in performing their obligations under the Contract:
		1. In strict accordance with the terms and limitations of any relevant Authority instructions
		2. In accordance with any relevant technical specifications or operating manuals relating to the item in question.
	2. The Contractor shall be responsible for the safe custody and due return of all GFA until re-delivered to the Authority or disposed of by agreement with the Authority during the Contract Term or on termination or expiry of the Contract. In the event of loss of or damage to any item of GFA the Contractor shall be responsible for the replacement, replacement cost or repair of such item, or loss or damage due to the negligence of or omission on the part of the Authority or its employees.
	3. The Contractor shall be responsible for any deterioration in the GFA and shall maintain and make good the Sites, buildings on Sites, the boundaries and boundaries structures and shall ensure that they are properly cleansed.
	4. The Contractor shall be directly responsible and accountable for all GFA in the possession or control of the Contractor. The Contractor shall open and maintain a Public Store Account (PSA) in accordance with Def-Stan 05-099 and shall ensure that all property of the Authority is recorded in the PSA.
	5. The Contractor shall provide the Authority upon being given reasonable prior written notice, the Comptroller and Auditor General and their authorised representatives with full access to, the right of inspection of, and extraction from all records whether manual or on computer that relate to GFA. All such records shall be maintained for a period of six (6) years after the Contractor’s responsibilities for the GFA have been discharged.
	6. Notwithstanding the provisions of the Exit/Demolition Plan, and subject to the provisions of Condition 18 at Contract expiry or termination or upon receipt by the Contractor of a reasonable written request from the Authority’s Commercial representative, the Contractor shall forward a list of GFA still held by the Contractor under the Contract, to the Commercial representative.
	7. All equipment provided by the Contractor to replace any GFA as a direct charge under the Contract, during the Contract term, shall be deemed as GFA under the Contract and the provisions of this Condition 46 shall apply.
	8. Disposal instructions for all GFA held or occupied by the Contractor under the Contract will be given in writing by the Authority’s Commercial representative at the appropriate time.
1. **The Sites**
	1. The Authority grants the Contractor a licence, as set out in Schedule 11 (Licence to Occupy) to use the Sites for the purpose of delivering the Contract..
	2. For the UK Sites, the Contractor shall, with the Authority’s prior written approval (not to be unreasonably withheld or delayed), negotiate at its own expense such contracts with utility suppliers or others to secure for the UK Sites and everything on the UK Sites such water, gas, electricity and telecommunications services, and storm or foul drainage, as are required to enable the Contractor to carry out its obligations under the Contract.
	3. The Contractor shall at its own expense obtain all easements, rights, licences and privileges that the Contractor requires to enable it to carry out its obligations under the Contract, where such easements, rights, licences and privileges are under, over and upon property or land that does not form part of the Sites. The Contractor shall inform the Authority’s Commercial representative in writing of any such easements, rights, licences and privileges which have been obtained or are being sought by the Contractor.
	4. Each Party’s obligations under this Condition 47 shall continue notwithstanding the grant of the licence(s) insofar as they remain to be performed and observed.
	5. The Authority shall not use or allow any agents, servants, Subcontractors, invitees, other tenants on the Sites to use property adjacent to or within the Sites for any use which would interfere with the provision of the Contractor Deliverables by the Contractor where either:
		1. The Authority owns an interest in such property, or such property is under the control of the Authority, or
		2. An interest in such property was owned by the Authority at the Effective Date of Contract but has subsequently been transferred to a third party.
2. **Consents and Planning Approval**
	1. For the UK Sites the Contractor shall:
		1. Be responsible for and shall obtain at its cost the consents, in so far as and to the extent not already obtained as at the Effective Date of Contract, by such date as will enable the Contractor to proceed with the provision of the Contract
		2. From the Effective Date of Contract, take all reasonable steps to keep the Authority informed of all steps taken in obtaining the consents and shall provide the Authority’s Commercial representative with any relevant documentation from the Effective Date of Contract and in particular give the Authority adequate opportunity to consider every application and proposed condition to be attached to the consents.
	2. The Contractor shall, for the purposes of any matter governed by [the planning practice guidance suite], under this Clause 48.2 and for that purpose only, act as the Authority’s sole and exclusive agent in matters relating to the obtaining of any planning approval, and the Contractor shall provide such information as the Authority may require in relation to the obtaining of any planning approval.
	3. The Authority will act in good faith and will give due consideration to all reasonable requests for assistance by the Contractor in obtaining the consents pursuant to this Condition 48.3 and will, where it is able, provide to the Contractor such information as the Contractor may reasonably require to enable the Contractor to fully discharge its obligations pursuant to this Condition 48.3. The Authority reserves the right to require the Contractor to withdraw an application for consents or planning approval, or seek an amendment to any application, should the Authority be unable to accept any conditions to be applied.
3. **Archaeology and Conservation**
	1. Materials and objects of any kind including those that are or appear to be fossils, antiquities or ordnance or which are likely to have an interest or value, found by the Contractor on the Sites during the delivery of the Contract, shall, as between the Contractor and the Authority, be the property of the Authority.
	2. On discovery of anything referred to in Clause 49.1, the Contractor shall:
		1. Take all practicable measures not to disturb the object
		2. Cease any work if the continuance of the work would endanger or disturb the object or prevent or impede its excavation or removal
		3. Take all necessary steps to preserve the object in the exact position and condition in which it was found, and
		4. Inform the Authority’s Commercial representative in writing of the discovery and location and await instructions which shall not be unreasonably withheld.
	3. If, as a consequence of the discovery of anything referred to in Clauses 49.1 and 49.2, or as a result of any instructions given by the representative of the Authority in accordance with Clause 49.2.4, the Contractor is unable to comply with any of its obligations under the Contract, then provided that the Contractor has informed the Authority’s Commercial representative in writing, and taken all reasonable measures to mitigate the consequences of such failure the Contractor shall not be in breach of those obligations under the Contract to the extent directly caused by complying with such instructions.
4. **NOT USED**

1. **Performance Measurement (Item numbers 2 and 4 of the Schedule of Requirements)**

51.1 The Contractor’s performance in delivering the Contractor Deliverables under Item numbers 2 and 4 of the Schedule of Requirements shall be measured over a monthly period (a complete calendar month) commencing from the first day of the first complete calendar month following the declared In Service Date (ISD) against the Key Performance Indicators (KPIs) detailed in Schedule 14 (Performance Measurements).

51.2 The measurement of achievement will be in accordance with the process set out in Schedule 14 (Performance Measurement).

1. **Measures in a Crisis**
	1. Throughout the Contract Term the Contractor shall be bound by the provisions of Schedule 12 (Measures in a Crisis).
2. **Authority Step-In**
	1. If the Authority reasonably believes that it needs to take action in connection with the Contract:
		1. Because a serious risk exists to the health or safety of persons or property or to the environment, and/or
		2. To discharge a statutory duty.

then the Authority shall be entitled to take action in accordance with Clauses 53.2 to 53.5 (inclusive).

* 1. If Clause 53.1 applies and the Authority wishes to take action, the Authority’s Commercial representative shall Notify the Contractor in writing of the following:
		1. The action it wishes to take;
		2. The reason for such action;
		3. The date it wishes to commence such action;
		4. The time period which it believes will be necessary for such action; and
		5. To the extent practicable, the effect on the Contractor and its obligation to provide the Contractor Deliverables during the period such action is being taken.
	2. Following service of such Notice, the Authority shall take such action as Notified and any consequential additional action as it reasonably believes is necessary (together, the “**Required Action**”) and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.
	3. If the Contractor is not in breach of its obligations under the Contract, then for so long as, up to a period of four (4) months from the date the Required Action commences, and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Contract:
		1. The Contractor shall be relieved from its obligations to provide such part of the Contract, and the right of the Authority to make Payment Deductions will be suspended for the corresponding period.
		2. In respect of the period of up to four (4) months in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance , the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contractor Deliverables affected by the Required Action in full over that period.
	4. If the Required Action is taken as a result of a breach of the obligations of the Contractor under the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Contractor Deliverables:
		1. The Contractor shall be relieved of its obligations to provide such part of the Contract, and
		2. In respect of the period in which the Authority is taking Required Action, the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contract affected by the Required Action in full over that period, less an amount equal to all the Authority’s costs of operation in taking the Required Action. Should the Authority’s costs exceed the Contract Price for the period the Authority shall be entitled to recover the excess costs.
	5. To the extent that provisions of Clauses 53.1 to 53.5 (inclusive) apply, during the period in which the Authority is taking the Required Action, the Authority shall be obliged to act reasonably at all times having due regard to all relevant circumstances relating to the provision of the Contract.
1. **Insurance**
	1. Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 13 (Insurance) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Condition 54 (Insurance) and Schedule 13 (Insurance) and any other insurances as may be required by law (together the Required Insurances). The Contractor shall ensure that each of these Required Insurances are effective in each case not later than the date on which the relevant risk commences.
	2. The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
	3. Where specified in Schedule 13 (Insurance), the Contractor shall ensure that the relevant policy of insurance:
		1. Shall contain an indemnity to principals condition or additional insured equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Contract
		2. Names the Authority as co-insured for its separate interest with attendant non-vitiation, waiver of subrogation and notice of cancellation provisions.
	4. Where the Insurance Act 2015 is relevant to any Required Insurance, the Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this Contract, including in circumstances where the Contractor is required to name the Authority on any such insurance policies to protect the Authority’s separate interests.
	5. Where the minimum limit of indemnity required in relation to any of the Required Insurances is specified as being "in the aggregate":
		1. If a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the Authority:
			1. Details of the policy concerned, and
			2. Its proposed solution for maintaining the minimum limit of indemnity specified, and
		2. If and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Contractor shall:
			1. Ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract, or
			2. If the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority’s Commercial representative full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.
	6. The Contractor 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.
	7. The Authority may elect (but shall not be obliged), where Notice has been provided to the Contractor, to purchase any insurance which the Contractor is required to maintain pursuant to this Contract, but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
	8. The Contractor shall, upon the date of this Contract and within fifteen (15) days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority’s Commercial representative, that the Required Insurances are in force and effect and meet the requirements of this Condition 54 and Schedule 13 (Insurance). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Condition 54 shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.
	9. The Contractor shall Notify the Authority at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. This Condition 54.9 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Condition 54.
	10. Except where the Authority is the claimant party, the Contractor shall give the Authority Notice within twenty (20) Business Days after any insurance claim in excess of [fifty thousand pounds (£50,000)] relating to this Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority’s Commercial representative) full details of the incident giving rise to the claim. The Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
	11. Where any Required Insurance referred to in this Condition 54 and Schedule 13 (Insurance) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.
	12. Except where specified by the Authority’s Commercial representative, all insurance proceeds received in respect of property damage as set out in section 3 - Property Damage "All Risks" Insurance and Contractors “All Risks” Insurance in Schedule 13 (Insurance) shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.
2. **Recourse to Public Funds**
	1. The Contractor shall at all times perform its obligations under the Contract at its own risk and without recourse to Government or other public funds or guarantees now or in the future, save with the prior written agreement of the Authority’s Commercial representative.
	2. The Contractor confirms that it has not applied for and has no intention (as at the Effective Date of Contract) of applying for any Government or European Union grants or funding or any other public funds or guarantees for the purpose of performing its obligations under the Contract. If the Contractor is or becomes entitled to apply for any such grants or funding in relation to the performance of its obligations under the Contract, it must inform the Authority and obtain its consent before submitting the relevant application. The Authority’s agreement to the Contractor’s application will be given on condition that, should the Contractor receive any such grant or funding, the payments made by the Authority to the Contractor in accordance with the Contract will be reduced by the amount of the grant or funding.
3. **Limitation of Contractor’s Liability**
	1. Subject to Clause 56.3, the Contractor's liability to the Authority:
		1. In aggregate pursuant to Clause 41.13 (Financial Consequences for a Fault Based/Insolvency Based Termination) shall be unlimited.
		2. Pursuant to Clause 3 of DEFCON 76 shall be unlimited
	2. Nothing in this Contract shall operate to limit or exclude the Contractor’s liability:
		1. for:
			1. Any liquidated damages
			2. Any amounts(s) which the Authority (to the extent expressly provided for under this Contract) is entitled to claim, retain or withhold in relation to the Contractor’s failure to perform or under-perform its obligations under this Contract, including service credits or other deductions
			3. Any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract)
			4. Any amount payable by the Contractor to the Authority in relation to Condition 26 – Transfer Regulations – Employee Transfer Arrangement on Exit, or pensions to the extent expressly provided for under this Contract
			5. Any liability of the Contractor to the Authority for any amount recoverable by or on behalf of the Contractor up to the maximum level under the terms of any insurance (including any amount, which would be or should be recoverable, but for the operation of any deductible or excess on any claim) held by the Contractor or any member of the Contractor’s group in relation to any risk arising under or in relation to this Contract;
		2. Under Condition 30
		3. For any liability that would not have been incurred but for the Contractor failing to carry out one or more of the risk mitigation activities specified in this Contract
		4. For death or personal injury caused by the Contractor’s negligence or the negligence of any of its personnel, agents, consultants or Subcontractors;
		5. For fraud, fraudulent misrepresentation or wilful misconduct of the Contractor’s personnel or their representatives
		6. In relation to the termination of this Contract on the basis of abandonment by the Contractor
			1. For breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982, or
			2. Any other liability which cannot be limited or excluded under general (including statute and common) law.
	3. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.
	4. Neither Party shall be liable to the other Party for:
		1. Any indirect, or consequential Loss, and/or
		2. Any Loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect)

arising from any breach of this Contract.

1. **Exploitation of Assets**
	1. The Contractor may enter into arrangements for third-party use of GFA issued under the Contract, provided that:
		1. Any third-party use is in accordance with Legislation
		2. Any third-party use is not a prohibited activity
		3. The third-party use cannot reasonably be expected to impair the ability of the Contractor to provide the Contractor Deliverables or impede any of the Authority’s legal duties or other functions or its operational requirements and
		4. Not less than 20 [twenty] Business Days prior to such third-party use, the Contractor shall provide the Authority's Commercial representative with details of:
			1. The identity of the proposed third party
			2. The service to be provided
			3. The impact on and risks to the provision of the Contractor
			4. Deliverables of providing that third-party use
			5. The estimated costs to be incurred and gross revenue which will be generated by the Contractor, and
			6. The contract or other agreement with the proposed third party.
	2. The Authority’s Commercial representative shall approve in writing, the relevant third-party use prior to any arrangement for such use being entered into. The Authority shall have sole discretion to accept or reject the proposal for third party use of GFA. The Contractor shall not enter into arrangements for third party use of MAB GFA.
	3. The third-party use shall terminate immediately on expiry or earlier termination of this Contract or, if the Authority so instructs, pursuant to Condition 52 (Measures in a Crisis) or Condition 53 (Step-In);
	4. Notwithstanding that the third-party use has been approved, the Authority may forbid the use of the GFA by any person or on any occasion:
		1. If the Authority reasonably believes that such use is not compatible with the use of the GFA as required by the Authority; or
		2. On security grounds; or
		3. If the third-party use causes a disruption to the Contractor Deliverables.
	5. The Contractor shall be entitled to charge for, and be paid by, each person undertaking third-party use, a fee determined by the Contractor for the use made of the Government Asset and subject to the Authority agreeing to allow any third party to use the facilities, the Contractor agrees to pay to the Authority 30% of any third-party revenue actually received by the Contractor (the **“Agreed Fee”**).
	6. The Contractor shall Notify the Authority's Commercial representative every 6 (six) months of the third-party use, the income received from the third-party (“**Income Notice**”).
	7. The Contractor shall give credit to the Authority and deduct from the next payment due under the Contract the Agreed Fee accumulated over the preceding 6 (six) month period provided that if a termination date occurs before the 6 (six) month Income Notice has been served on the Authority’s Commercial representative any cumulative Authority’s third-party use share outstanding shall be paid to the Authority by the Contractor.
	8. If, for any reason, the Contractor makes any direct or indirect losses as a result of any third-party use, the Authority shall not be obliged to bear any such losses unless the Authority has prevented, prohibited or interfered with third party use pursuant to Condition 52 (Measures in a Crisis).
2. **No Agency**
	1. Nothing in the Contract shall be construed as creating a partnership or as an agreement of employment between the Authority and the Contractor.
	2. Save as expressly provided otherwise in the Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.
3. **Mitigation**
	1. Each of the Authority and the Contractor shall at all times takes all reasonable steps to minimise and mitigate any claim for loss for which the relevant Party is entitled to bring against the other Party pursuant to the Contract.
4. **Assistance with Re-Competition**
	1. Within ten (10) Business Days of the commencement of any re-competition period, the Contractor shall, and shall procure that each Subcontractor shall, provide Notice in writing to the Authority’s Commercial representative stating whether the Contractor, a Subcontractor or any Group Company of the Contractor or Subcontractor intends to bid to be the provider of any Contractor Deliverable similar to the Contractor Deliverables that, if not supplied by the Contractor, a Subcontractor or any of their Group Companies, would otherwise be provided by a new provider.
	2. If the Contractor, the Subcontractors or any of their Group Companies are involved in any actual or potential bid to supply the replacement Contractor Deliverables, the Contractor shall ensure that (except with the Authority’s Commercial representative’s prior written consent), no member of the personnel engaged or had been engaged by the Contractor in delivering any part of the Contractor Deliverables, shall be part of the relevant Contractor’s or Subcontractor’s (or any of their Group Companies’) bid team, and nor shall any member of the personnel engaged or had been engaged by the Contractor in delivering any part of the Contractor Deliverables, supply information gained through the provision of the Contractor Deliverables to such bid team. The Contractor shall, and shall ensure that the Subcontractors shall, implement all reasonable measures to ensure separation (including by implementing appropriate information barriers) between the relevant bid team and the personnel engaged or had been engaged by the Contractor in delivering any part of the Contractor Deliverables, with a view to ensuring that information gained from the supply of the Contractor Deliverables is not used to put the Contractor, the Subcontractors or their Group Companies bid(s) in a better position than they would have been in, had the Contractor not provided the Contractor Deliverable. Where required by the Authority, the Contractor shall enter into a binding agreement established to ensure appropriate information barriers are in place during any re-competition of the Contractor Deliverables or services similar to the Contractor Deliverables.
	3. During the re-competition period, the Contractor shall provide to the Authority’s Commercial representative and any relevant potential new providers, at the Authority’s written request:
		1. Any assistance reasonably required to procure safely, efficiently and successfully, a new provider for the supply of contractor deliverables similar to all or part of the Contractor Deliverables
		2. All information and assistance reasonably required to enable any potential new provider
			1. To carry out appropriate due diligence on the nature of the relevant Contractor Deliverable
			2. To prepare an informed, non-qualified offer for the provision of contractor deliverables similar to all or part of the Contractor Deliverables, and
			3. Not to be disadvantaged in the procurement process in comparison to the Contractor Group or any Subcontractor (or its Group Companies).
	4. The Contractor shall provide such information in the format reasonably requested in writing by the Authority’ Commercial representative (including in an electronic format capable of being read by Microsoft Office or Adobe reader applications). From time to time, the Contractor shall also Notify the Authority’s Commercial representative of any likely changes to such information and update it within five (5) Business Days of receiving a written request from the Authority’s Commercial representative to do so. The Contractor warrants to the Authority that the information provided pursuant to this Clause 60.4 shall be complete and accurate in all material respects.
	5. The Authority shall be entitled to carry out an audit of any Information provided by the Contractor on not less than five (5) Business Days’ prior written Notice. The Contractor shall provide all reasonable assistance to and co-operate with the Authority, including providing access to its premises, personnel, the system, documents and any other relevant information. If the Authority identifies any inaccuracies in the audited information, the Contractor shall promptly correct these.
5. **Entire Agreement**
	1. This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
	2. Each Party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.
	3. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
	4. Nothing in this Clause 61 shall limit or exclude any liability for fraud.
6. **Authorisation by the Crown for use of Third Party Intellectual Property Rights**
Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.