

- 59.9 Where any Article or materiel in the Authority's possession or control has re-vested in the Contractor in accordance with Clause 59.4 or Clause 59.5 (*Vesting*), the Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in this Contract. If the Article or materiel is on the premises of the Authority or the premises of any Government Department (including any agencies thereof), the Contractor shall remove them within fourteen (14) days of their re-vesting.

**60 Issued Property**

- 60.1 All Issued Property shall remain the property of the Authority. It shall be used in the execution of this Contract and for no other purpose, without the prior approval in writing of the Authority.
- 60.2 Neither the Contractor, nor any Sub-Contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, Sub-Contractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.

**Receipt**

- 60.3 Subject to Clauses 60.4 and 60.7 (*Receipt*), within fourteen (14) Working Days of receipt of Issued Property, or such other longer period as may be specified in this Contract, the Contractor shall:

- 60.3.1 check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;
- 60.3.2 conduct a reasonable visual inspection; and
- 60.3.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided,

and notify the Authority of any defects, deficiencies or discrepancies discovered.

- 60.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 60.3 (*Receipt*) shall count from the date on which packages are opened.
- 60.5 The Authority shall within a reasonable time after receipt of any notice under Clause 60.3 (*Receipt*) replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and the Contractor shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFX Failure and, if so, shall consider initiating the procedures in Clause 24 (*GFX Failures*) and shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
- 60.6 In the event that the Authority fails to provide, replace or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 60.3 (*Receipt*), the Contractor shall (having first taken all

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reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFX Failure and, if so, shall consider initiating the procedures in Clause 24 (*GFX Failures*) and if the Parties agree, fair and reasonable revisions of the Contract Price, delivery schedule and/or any other matter shall be considered and, if agreed, a Change, to incorporate the agreed changes to this Contract, shall be initiated (such changes having due regard to any relief that may have been granted to the Contractor in accordance with Clause 24 (*GFX Failures*)).

60.7 Clauses 60.3 to 60.6 (inclusive) (*Receipt*) do not apply in the following circumstances:

- 60.7.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in this Contract;
- 60.7.2 where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract;
- 60.7.3 where Special Jigs, Tools Etc. become Issued Property under Clause 69 (*Special Jigs, Tooling and Test Equipment*); and/or
- 60.7.4 where Issued Property is in the care, custody or control of the Contractor as at the Effective Date.

**Custody**

- 60.8 Subject to Clause 60.11 (*Custody*), the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into any Articles, and shall be responsible for all Loss or damage thereto, until re-delivered in accordance with the Authority's instructions (as may be amended from time to time) or until the expiry of the period specified in Clause 60.15 (*Accounting and return of Issued Property*).
- 60.9 The Contractor shall be responsible for such calibration and maintenance of the Issued Property as may be required for the purpose of the Contractor delivering the Contractor Deliverables and performing its other obligations in accordance with this Contract.
- 60.10 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property, provided that the provisions of this Clause 60.10 (*Custody*) shall not apply to any Issued Property in the care, custody or control of the Contractor as at the Effective Date.
- 60.11 The Contractor shall not be liable in respect of:
  - 60.11.1 defects or deficiencies notified to the Authority in accordance with Clause 60.3 (*Receipt*) or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 60.3 (*Receipt*);
  - 60.11.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is

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contributed to by any misuse, lack of care or want of maintenance by the Contractor);

60.11.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract; and

60.11.4 any Loss or damage to Issued Property arising from:

- (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
- (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
- (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or
- (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

**Accounting and return of Issued Property**

60.12 The Contractor shall:

60.12.1 open and maintain a Public Store Account ("PSA") in accordance with Def Stan 05-099;

60.12.2 ensure that all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time; and

60.12.3 on being given two (2) months' notice or such other period as has been stated in this Contract permit, and co-operate with, the Authority to conduct audits of the property of the Authority recorded in the PSA in a manner to be determined by the Authority and where the Authority has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of issue, then these audits may be conducted without notice.

60.13 Once title in Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 69.4 (*Special Jigs, Tooling and Test Equipment: Passing of property*), the Contractor shall record that equipment in the PSA in accordance with Def Stan 05-099.

60.14 The Contractor shall at least once in every two (2) Contract Months forward a list of Issued Property which is in its possession but which is no longer required by the Contractor for the provision of the Contractor Deliverables, to the Authority's Representative. The Authority's Representative shall, within two (2) Contract Months from receipt of the relevant list notify the Contractor of a place or places within the United Kingdom where the Contractor should deliver such Issued Property. Where the Authority has notified such delivery instructions, the Contractor shall comply with such

instructions as soon as is reasonably practicable, ensuring that appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised. Where there is no such notification, the Contractor shall request (in writing) the Authority for delivery instructions and shall repeat such request at least once weekly thereafter until such delivery instructions are notified to the Contractor by the Authority. Following receipt of such delivery instructions the Contractor shall deliver the relevant Issued Property to the Authority (in each case ensuring appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised).

- 60.15 Without prejudice to Schedule A (*Contractor's Obligations*) and Clause 60.14 (*Accounting and return of Issued Property*), on completion or termination of this Contract, the Contractor shall forward a list of Issued Property still held to the Authority's Representative. Return or disposal of such Issued Property will be as specified in this Contract, or as instructed by the Authority on completion or termination of this Contract. If no disposal instructions are specified in this Contract the Authority shall provide such instructions within two (2) months of the Contractor's written request to do so.

## **61 Accounting for property of the Authority**

### **61.1 The Contractor shall:**

- 61.1.1 maintain a Public Store Account (PSA), as defined in Def Stan 05-099, which shall include a complete list of all property of the Authority, as defined, in Clause 61.2 (*Accounting for property of the Authority*), and record for that property all transactions or other accounting information specified in Annex A to DEFCON 694;
- 61.1.2 supply to the Authority quarterly reports on the current PSA holdings. At least one report in any twelve (12) month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in Def Stan 05-099. The other three (3) reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;
- 61.1.3 ensure that the PSA is available for inspection by the Authority at any reasonable time;
- 61.1.4 on being given two (2) months' notice permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority provided that where the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
- 61.1.5 retain the PSA for a period of three (3) years after disposal of the last item of the property of the Authority or for any other period as may be specified in this Contract;
- 61.1.6 if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's PSA for property of the Authority issued in aid of this Contract, the Contractor shall

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include in any Sub-Contract with those Sub-Contractors the provisions corresponding to those set out in this Clause 61 (*Accounting for property of the Authority*) that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses 61.1, 61.2, 61.4 and 61.7 (*Accounting for property of the Authority*); and

- 61.1.7 manage the GFX component of the PSA in accordance with the provisions of Def Stan 05-099 and implement any new edition of or amendment to Def Stan 05-099 subject to Clause 84 (*Change*) within three (3) months of the publication date of the new edition. These amendments shall not have retrospective effect.
- 61.2 For the purposes of this Clause 61 (*Accounting for property of the Authority*), "**property of the Authority**" means GFX and fixed assets, including property issued under Clause 60 (*Issued Property*) and property of the Authority issued to the Contractor under any other authorising document.
- 61.3 For the avoidance of doubt, it is a condition of this Contract that this Clause 61 (*Accounting for property of the Authority*) shall apply to all property issued to the Contractor from the Effective Date, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.
- 61.4 The Schedule A (Contractor's Obligations) arising under this Clause 61 (*Accounting for property of the Authority*) in respect of property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled including the provisions of Clause 61.1.5 (*Accounting for property of the Authority*).
- 61.5 The Schedule A (Contractor's Obligations) arising under this Clause 61 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall survive completion of this Contract and shall not be completed until all those obligations are fulfilled including the provisions of Clause 61.1.5 (*Accounting for property of the Authority*) unless and until a subsequent contract containing DEFCON 694 is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.
- 61.6 If, after completion of this Contract, no subsequent contract is placed containing DEFCON 694 within the period detailed at Clause 61.1.5 (*Accounting for property of the Authority*) then the Schedule A (Contractor's Obligations) arising under this Clause 61 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed in Clause 61.1.5 (*Accounting for property of the Authority*).
- 61.7 The Authority reserves the right to amend Annex A to DEFCON 694 without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause 61 (*Accounting for property of the Authority*), Annex A to DEFCON 694 shall be regarded as a specification which is subject to the provisions of Clause 84 (*Change*). If the Authority exercises this right:

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61.7.1 the Contractor shall implement the amendment to Annex A to DEFCON 694 at the commencement of the Authority's next accounting year provided that a notice of six (6) months or such other period as may expressly be agreed between the Authority and the Contractor is given to the Contractor. These amendments shall not have retrospective effect; and

61.7.2 the Contractor shall inform the Authority as soon as practicable, but in any event within three (3) months of notice having been given, if the Contractor cannot comply with the amendment to Annex A to DEFCON 694.

**62 Loss Of Or Damage To The Articles**

62.1 Until delivery, the risk of loss of or damage to the Articles remains with the Contractor. Without prejudice to any other rights or remedies of the Authority, the Contractor shall make good any such loss or damage however caused or occasioned which occurs before delivery.

62.2 Clause 62.1 (*Loss Of Or Damage To The Articles*) shall apply notwithstanding:

62.2.1 that the Articles may have been inspected by the Authority; or

62.2.2 that the property therein may have passed earlier than upon delivery.

62.3 Unless otherwise agreed and save for the provisions of Clause 62.4 (*Loss Of Or Damage To The Articles*) the Contractor shall not after delivery be at risk in respect of the Articles, except where the Authority rejects any Article under Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), in which case the risk in the rejected Article shall revert to the Contractor on the earlier of:

62.3.1 the removal of the Article by the Contractor in accordance with Clause 57.8 (*Rejection*); or

62.3.2 the close of business on the last day of the period in which the Contractor is required to remove the rejected Article in accordance with Clause 57.8 (*Rejection*); or

62.3.3 the return of the Article by the Authority in accordance with Clause 57.9 (*Rejection*).

62.4 Notwithstanding the provisions of Clause 62.3 (*Loss Of Or Damage To The Articles*), if the Contractor has given notice of objection under Clause 57.11 (*Rejection*), he shall not be at risk in respect of the rejected Article where a dispute between the parties relating to the rejection remains unresolved and the Article remains in the possession of the Authority.

62.5 This Clause 62 (*Loss Of Or Damage To The Articles*) shall not apply to any Articles issued to the Contractor by or on behalf of the Authority in connection with which the Contractor is required to carry out any Service. Such Articles shall be subject to Clause 59 (*Vesting*).

**63 Repair And Maintenance Information**

- 63.1 Repair and maintenance information identified Part 5 to Schedule S (*IPR*) or generated subject to Schedule S (*IPR*) shall be delivered to the Authority and marked according to the marking requirements of Schedule S (*IPR*).

**64 Retention of Records**

- 64.1 Retention of Records shall be subject to Part 9 (*Intellectual Property Rights*) of Schedule S (*IPR*).

**65 Marking of Articles**

- 65.1 Each Article shall be marked in accordance with the procedure laid out in this Contract (Refer to Schedule A & Q). Where no procedure is stated, the Contractor shall mark each Article clearly and indelibly in accordance with the requirements of the relevant Def Stan 05-132 as specified in this Contract or specification. In the absence of such requirements, the Articles shall be marked with the Authority stock reference, NSN or alternative reference number shown in this Contract. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Articles.
- 65.2 The marking shall include any serial numbers allocated to the Article.
- 65.3 Where because of its size or nature it is not possible to mark an Article with the required particulars, the required information should be included on the package or carton in which the Article is packed in accordance with Clause 53 (*Packaging*).

**66 Redundant Materiel**

- 66.1 All Redundant Materiel resulting from work carried out under, or procured for the purposes of, this Contract, the costs of which have been paid by the Authority under this Contract, or which is otherwise owned by the Authority, shall be disposed of in accordance with this Clause 66 (*Redundant Materiel*).
- 66.2 On expiry or termination of this Contract or earlier if appropriate, the Contractor shall prepare:
- 66.2.1 a list of those items of the materiel referred to in Clause 66.1 (*Redundant Materiel*) which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and in the case of repairable items, the estimated price of repair; and
  - 66.2.2 a list of those items of the materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.
- 66.3 The Contractor shall send the lists referred to in Clause 66.2 (*Redundant Materiel*) to the Authority's Commercial Officer.

- 66.4 Within three months of the date of receipt of the lists pursuant to Clause 66.3 (*Redundant Materiel*), the Authority shall issue disposal instructions to the Contractor. Such disposal instructions shall require that the items of materiel are either:

- 66.4.1 transferred to other subsisting contracts;
- 66.4.2 subject to contract, retained by the Contractor for use in the performance of future contracts placed with the Contractor;
- 66.4.3 subject to contract, repaired by the Contractor; or
- 66.4.4 at the discretion of the Authority, sold by the Contractor, acting on behalf of the Authority, for the best price reasonably obtainable,

and materiel designated in accordance with Clause 66.2.2 (*Redundant Materiel*) shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

- 66.5 The proceeds of the sale of items of materiel sold pursuant to Clause 66.4.4 (*Redundant Materiel*) shall be credited to the Authority in accordance with arrangements made between the Contractor and the Authority.
- 66.6 A list of the items sold by the Contractor shall be sent to the Authority's Commercial Officer together with a statement of the proceeds of sale.

**67 Defect Investigation and Liability**

- 67.1 The procedure for the reporting, investigation and rectification of all defects whether or not they relate to design, software or manufacturing shall be carried out as specified by the Authority acting reasonably.
- 67.2 Where it is established that, pursuant to this Contract or any other contract relating to the Contractor Deliverables, the Contractor bears the liability for any of the costs of investigating, repairing or rectifying a defect, the costs of any such work undertaken by the Contractor shall be borne by the Contractor.
- 67.3 If liability for the defect is in dispute, the Contractor shall separately identify and record all related costs.
- 67.4 Any Contractor Deliverable, and work thereon, which after examination is required to be rectified/repared at the Authority's or Contractor's expense, (or if liability is in dispute), is to be notified to the Delivery Team or the Project Manager, prior to any work being put in hand, or transfer to any other contract placed by the Authority, e.g. for repair, overhaul and/or modification.
- 67.5 The Contractor shall submit to the Authority's Representative a tasks list, in duplicate, countersigned by the Project Manager, of the Contractor Deliverables or work which have been investigated/rectified. The list shall be submitted in accordance with the timescales laid down in this Contract and if none is specified within four (4) weeks of completion of all work. The list shall include:



- 67.5.1 the description, including, where appropriate, the Stores Reference Number and Serial Number of all Contractor Deliverables or work investigated;
- 67.5.2 the description of all other tasks (e.g. design of modification, amendments of drawings);
- 67.5.3 against each Item, whether liability has been accepted by the Authority or the Contractor, or is still to be determined, quoting dates and references of relevant correspondence;
- 67.5.4 against each Item, the Contract Number and Item Number against which repair, overhaul and/or modification of the Contractor Deliverables has been or will be carried out;
- 67.5.5 where liability rests with the Contractor or where overhaul, repair or modification has already been completed for any item, the Unique Order Identifier generated by the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

**68 Transport of Articles and Issued Property**

- 68.1 The Contractor shall be responsible for transporting the Articles supported under this Contract and returning the items of Issued Property (as the case may be) from the point of origin to a purple gate within the United Kingdom as notified by the Authority to the Contractor from time to time. The Contractor shall also be responsible for all loading and unloading of the Articles and the items of Issued Property, including, where necessary, the provision of special handling equipment.
- 68.2 Where this Contract states that the Authority is responsible for transport of items of Issued Property, the Authority shall only be responsible to transport such Issued Property to a purple gate within the United Kingdom.

**69 Special Jigs, Tooling and Test Equipment**

- 69.1 The Contractor shall provide all jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with associated fixtures, fittings and software necessary for the manufacture of the Articles or for the provision of the Contractor Deliverables, unless supplied by the Authority in accordance with Schedule D (GFA).

**Pricing**

- 69.2 The Contract Price includes an appropriate amount to enable the Contractor to recover its expenditure on Special Jigs, Tools Etc., including the cost of maintenance and calibration under Clause 69.8 (*Accounting and Control*).
- 69.3 The Contractor shall not claim assistance from other government funds (e.g. Regional Development Grants or selective financial assistance) or other third parties towards the costs of any Special Jigs, Tools Etc.

**Passing of property**

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- 69.4 Except where otherwise specified in this Contract, the Special Jigs, Tools Etc. shall become the property of the Authority:
- 69.4.1 where the Special Jigs, Tools Etc. are delivered to the Authority before being utilised by the Contractor for any purpose, in accordance with Clause 57 (*Delivery, Acceptance, Rejection and Transfer of Title and Risk*) as if they were Articles; or
  - 69.4.2 where the Authority authorises the Contractor to utilise the Special Jigs, Tools Etc. for the production of articles for a Third Party in advance of their being used for the production of Articles under this Contract, upon delivery of the first article so produced for the Third Party; or
  - 69.4.3 where the Contractor is to utilise the Special Jigs, Tools Etc. in respect of the Contractor Deliverables before delivery of such Special Jigs, Tools Etc. to the Authority, the earlier to occur of when the Special Jigs, Tools Etc. are delivered to the Contractor or title to such Special Jigs, Tools Etc. is secured by the Contractor or any Contractor Related Party through any contractual arrangement to which the Contractor or any Contractor Related Party is a party; and
  - 69.4.4 in all other cases upon acceptance of the first Article delivered under this Contract or upon expiry or termination of this Contract whichever is the earlier.
- 69.5 Where property in the Special Jigs, Tools Etc. passes to the Authority while they are still required to provide the Contractor Deliverables, they shall be treated thereafter as Issued Property for the purposes of Clauses 60 (*Issued Property*) and 61 (*Accounting for property of the Authority*).

**Modifications**

- 69.6 Notwithstanding the passing of property to the Authority pursuant to Clause 69.4 (*Passing of property*), the Contractor shall be free to modify the Special Jigs, Tools Etc. as it may deem necessary in order to produce the Articles or to provide the Contractor Deliverables, and the Authority's approval of such modifications shall not be required.

**Accounting and control**

- 69.7 The Contractor shall account for and control the Special Jigs, Tools Etc. in accordance with the provisions of Clause 69.5 (*Passing of property*). Pending the transfer to the Public Store Account, the Contractor shall:
- 69.7.1 maintain a list of Special Jigs, Tools Etc. procured or manufactured by the Contractor;
  - 69.7.2 make the list available to the Authority for inspection by the Authority;
  - 69.7.3 maintain the list for three (3) years after disposal of the Special Jigs, Tools Etc., where not transferred to the Public Store Account in accordance with Clause 60 (*Issued Property*);

- 69.7.4 forward the list to the Authority's Representative following first Article acceptance and prior to transfer of Special Jigs, Tools Etc. to the Public Store Account; and
  - 69.7.5 remove from the list any Special Jigs, Tools Etc. transferred to the Public Store Account.
- 69.8 The Contractor shall be responsible for the safe custody, maintenance and calibration necessary to retain the relevant Special Jigs, Tools Etc. on any Contractor premises until delivered to the Authority.

**Availability**

- 69.9 Once property in the Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 69.4 (*Passing of property*), the Contractor shall, if required, deliver the Special Jigs, Tools Etc. to such individual, company, factory or Government Establishment as may be named by the Authority. The Contractor shall not be entitled to any further payment for delivering the Special Jigs, Tools Etc. other than for the recovery of packing and carriage costs reasonably incurred. This Clause 69.9 (*Availability*) shall not, however, entitle the Authority to require the Contractor to dispose of the Special Jigs, Tools Etc. to the prejudice of this Contract or other contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for such use has been given in accordance with Clause 69.11 (*Use for other than the purposes of the Authority*). Where the Contractor holds no contracts for such articles, but having received the Authority's approval in accordance with Clause 69.11 (*Use for other than the purposes of the Authority*), has made a firm written offer to a Third Party to supply such articles, the Authority shall not be entitled to dispose of the Special Jigs, Tools Etc. until such time as the Contractor's offer has expired and no commitment to supply those articles or perform those services remains.

**Delivery**

- 69.10 The Special Jigs, Tools Etc. shall be delivered to the Authority by the Contractor as notified to the Contractor from time to time (in each case at no additional cost to the Authority).

**Use for other than the purposes of the Authority**

- 69.11 The Contractor shall not use the Special Jigs, Tools Etc. for any other purposes other than those of the Authority without first obtaining the written approval of the Authority and in accordance with the terms, including payment, for such other use as stated in a commercial exploitation, or other agreement between the Contractor and the Authority. In Sub-Contracts, which include the provisions of this Clause 69 (*Special Jigs, Tooling and Test Equipment*), the Contractor shall require that such written approval be obtained direct from the Authority.

**70 Automatic Test Equipment Data Requirements**

- 70.1 The Contractor shall, upon request, supply the Authority with such of the test data as may be required for the design and provision of test programmes, jigs and adaptors etc. necessary to enable the Articles to be supported by Automatic Test Equipment ("ATE").

- 70.2 To enable efficient use of ATE, the principles of testability shall be incorporated in accordance with BS EN 60706-5 (*Maintainability of equipment – Part 5: Testability and diagnostic testing*), or equivalent.
- 70.3 The test data shall normally be contained within the test specification and written in accordance with the documentation referred to in DEFSTAN 00-052 (*The General Requirements for Product Acceptance and Maintenance Test Specifications and Test Schedules*) for each Article requiring test as stated in this Contract, taking cognisance of DEFSTAN 00-070 (*Standard Serviceability Test - The Process for the Preparation of and Requirements and Guidance for, a Standard Serviceability Test Specification*) and will be a Contractor Deliverable.
- 70.4 The ATE shall comply with the requirements stated within DEFSTAN 66-031 Part 8 (*Requirements for Electronic and Electrical Test and Measurement Equipment - Requirements for Automatic Test Systems utilising an Open System Architecture*).
- 70.5 In the event that the Contractor is required under this Contract to provide test data, a fair and reasonable price (agreed under Clause 5 Ad Hoc Task Order Approval Process) based on the actual work involved shall be paid to the Contractor by the Authority for the supply of such test data.

## **71 Counterfeit Materiel**

- 71.1 For the purposes of this Clause 71 (*Counterfeit Materiel*), "**Counterfeit Materiel**" shall mean any Article or any part thereof whose origin, age, composition, configuration, certification status or other characteristic (including whether or not such Article or part has been used previously) has been falsely represented by:
- 71.1.1 misleading marking of the materiel, labelling or packaging;
  - 71.1.2 misleading documentation; or
  - 71.1.3 any other means, including failing to disclose information;
- except where it has been demonstrated that the false representation was not the result of dishonesty by the Contractor or any party within the Contractor's supply chain.
- 71.2 Where the Authority suspects that any Article or consignment of Articles contains Counterfeit Materiel, it shall:
- 71.2.1 notify the Contractor of its suspicion and reasons therefor;
  - 71.2.2 where reasonably possible, and if requested by the Contractor within ten (10) Working Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by Authority) afford the Contractor the facility to (i) inspect the Article or consignment and/or (ii) obtain a sample thereof for validation or testing purposes;
  - 71.2.3 give the Contractor a further twenty (20) Working Days or such other reasonable period agreed by the Authority, from the date of the inspection at Clause 71.2.2(i) (*Counterfeit Materiel*) or the provision of a sample at

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Clause 71.2.2(ii) (*Counterfeit Materiel*), to comment on whether the Article or consignment meets the definition of Counterfeit Materiel; and

- 71.2.4 determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Article or consignment meets the definition of Counterfeit Materiel.

Where the Authority has determined that the Article, part or consignment of Articles contain Counterfeit Materiel then it may reject the Article, part or consignment under Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).

- 71.3 In addition to its rights under Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), where the Authority reasonably believes that any Article or consignment of Articles contains Counterfeit Materiel, it shall be entitled to:

71.3.1 retain any Counterfeit Materiel; and/or

71.3.2 retain the whole or any part of such Article or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Article, or consignment;

and such retention shall not constitute acceptance under Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).

- 71.4 Where the Authority intends to exercise its rights under Clause 71.3 (*Counterfeit Materiel*) it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at its own risk and expense and subject to any reasonable controls specified by Authority, for:

71.4.1 the separation of Counterfeit Materiel from any Article or part of an Article; and/or

71.4.2 the removal of any Article or part of an Article that the Authority is satisfied does not contain Counterfeit Materiel.

- 71.5 In respect of any Article, consignment or part thereof that is retained in accordance with Clause 71.3 (*Counterfeit Materiel*), including where the Authority permits the Contractor to remove non-Counterfeit Materiel under Clause 71.4 (*Counterfeit Materiel*) but the Contractor fails to do so within the period specified by the Authority and subject to Clause 71.9 (*Counterfeit Materiel*), the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

71.5.1 to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;

71.5.2 to pass it to a relevant investigatory or regulatory authority;

71.5.3 to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or

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- 71.5.4 to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

Exercise of the rights granted at Clause 71.5.1, 71.5.2 and 71.5.3 (*Counterfeit Materiel*) shall not constitute acceptance under Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).

- 71.6 Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under Clause 71.5.4 (*Counterfeit Materiel*). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under Clause 71.5.4 (*Counterfeit Materiel*) then the balance shall accrue to the Contractor.
- 71.7 The Authority shall not use a retained Article or consignment other than as permitted in this Clause 71 (*Counterfeit Materiel*).
- 71.8 The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- 71.9 Where the Contractor has objected in writing to the notification of the rejection by the Authority in accordance with Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), the Authority shall not exercise its rights at Clause 71.5 (*Counterfeit Materiel*), unless and until the objection or dispute has been resolved in favour of the Authority. If no such written objection is received, then the Contractor shall be deemed to have waived any rights to object to the Authority exercising the rights granted at Clause 71.5 (*Counterfeit Materiel*).
- 71.10 The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in this Clause 71 (*Counterfeit Materiel*) except where it has been determined by the Contract dispute resolution procedure that the Authority has made an incorrect determination under Clause 71.2.4 (*Counterfeit Materiel*). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with Clause 71.2 (*Counterfeit Materiel*).

**72 Safety and Airworthiness**

- 72.1 The Contractor shall comply with the provisions of the Contract that are agreed at the Effective Date.

**73 Radio Transmissions**

- 73.1 Where in the UK it is necessary for the Contractor to make radio transmissions for the purpose of test and development of electronic equipment under this Contract, the Contractor shall obtain an appropriate licence from the UK regulatory authority, OFCOM, in accordance with the Wireless Telegraphy Act 2006.
- 73.2 The Contractor shall ensure that prior to making any transmission a licence exists that covers the particular transmissions of this Contract in all respects.
- 73.3 The Contractor shall agree with the Authority the frequencies to be used for this Contract.

**74     Use Of Asbestos**

**Definitions**

- 74.1 For the purposes of this Clause 74 (*Use Of Asbestos*), "**Asbestos**" shall have the same meaning as "asbestos" as defined in Regulation 2 of the Control of Asbestos Regulations 2012 (COAR).

**Prohibition of Asbestos**

- 74.2 Subject to Clauses 74.4 and 74.5 (*Exemption*) below, no Asbestos of any type shall be incorporated into any Articles (as defined in Schedule G (*Definitions*)) or other material to be supplied under this Contract.

**Notification**

- 74.3 The Contractor shall notify the Authority in writing as soon as they become aware that Asbestos may be incorporated in Articles or other materials to be supplied or processed during performance of this Contract.

**Exemption**

- 74.4 The Secretary of State may issue a Defence Exemption Certificate under the REACH Enforcement Regulations 2008 exempting the Contractor from parts of the REACH Enforcement Regulations 2008. The Contractor may incorporate Asbestos into Articles and / or material supplied, or use or process it in the performance of services under this Contract in accordance with the conditions set out in the Defence Exemption Certificate.
- 74.5 If at any stage during the Contract Period, an alternative substance becomes available, the Contractor shall bring this to the attention of the Authority immediately, by notice in writing. The Authority shall then determine, in consultation with the Contractor and the Health and Safety Executive where appropriate, whether the substance would be suitable for incorporation into any Articles or material which have yet to be supplied under this Contract. The Authority may require the Contractor to suspend any further production of such Articles or material or delivery of services, pending such determination, thereby relieving the Contractor (for the time being) of any contractual obligations to provide such Articles, material or services. In the event that the Authority determines that the alternative substance would be suitable for incorporation into such Articles or material or in the performance of services in lieu of Asbestos, the Authority may vary its requirements in the light of any such determination.
- 74.6 If, at any stage during the Contract Period, the Secretary of State issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with the REACH Enforcement Regulations 2008, the effect of which is that any further supply of the Articles or delivery of services under this Contract would be prohibited by the REACH Enforcement Regulations 2008, the Contractor shall, on becoming aware of the further certificate, immediately refrain from incorporating Asbestos into any such Articles or performing the service and shall provide the Authority with written confirmation of this within forty-eight hours. The Authority reserves the right to vary its requirements in the light of any such decision.

- 74.7 The Contractor shall obtain from the Health and Safety Executive or the Secretary of State for Defence as appropriate, an exemption from the requirements of the COAR under Regulation 29 or 30 where an exemption is necessary for performance of this Contract.

## **PART 12 - CONTRACT SPECIFIC PROVISIONS**

### **75 Quality Assurance**

- 75.1 The Contractor shall comply with the Quality Assurance Plan as per Deliverable B1-14 of Schedule B1 of this Contract and the Quality Assurance Plan shall be amended from time to time in accordance with Good Industry Practice and AQAP 2105.
- 75.2 Notwithstanding that the Quality Assurance Plan will have been seen and agreed by the Authority, the Contractor shall be solely responsible for the accuracy, suitability and applicability of the Quality Assurance Plan.
- 75.3 The Contractor shall comply with:
- 75.3.1 AQAP 2105 Ed C (*NATO Requirements for Deliverable Quality Plans*);
  - 75.3.2 AQAP 2210 Ed A – NATO (*Supplementary Software Quality Assurance Requirements*);
  - 75.3.3 AQAP 2310 Ed B -- NATO (*QA Requirements for Aviation Space and Defence Suppliers*) (AS9100 Based);
  - 75.3.4 DEF STAN 05-61, Part 1 (*Concessions*);
  - 75.3.5 DEF STAN 05-61, Part 4 (*Contractor Working Parties*);
  - 75.3.6 DEF STAN 05-61, Part 9 (*Independent Inspection of Safety Critical Item*);
  - 75.3.7 DEF STAN 05-135 (*Avoidance of Counterfeit Materiel*);
  - 75.3.8 DEF STAN 05-57 (*Configuration Management of Defence Materiel*); and
  - 75.3.9 DEF STAN 05-100 (*MOD Requirements for Aircraft Flight and Ground Running*).
- 75.4 All standards (DEFCON, DEF STAN, AQAPs, JSP etc) stated under the Contract will be at the extant issue number at Contract Award. Should the Authority require the Contractor to meet an up issued version of any standard this will be subject to Clause 84 (*Change*).
- 75.5 The Contractor is responsible for ensuring that all Contractor Deliverables conform to the requirements of this Contract and where applicable shall provide a Certificate of Conformity in accordance Schedule A (Contractor's Obligations) and the Quality Assurance Plan One copy of the Certificate of Conformity shall be sent to the Authority (using the details set out at Box 2 of Schedule W (*Addresses and Other Information (DEFFORM 111)*)) upon delivery and one copy shall be provided with the Articles to the recipient of the Service.



- 75.6 The Certificate of Conformity shall be considered by the Contractor as a record and Clause 33 (*The Contractor's Records*) shall apply.
- 75.7 The information provided on the Certificate of Conformity shall include:
- 75.7.1 Contractor name and address;
  - 75.7.2 Contractor unique Certificate of Conformity reference number;
  - 75.7.3 contract number and where applicable a contract amendment number;
  - 75.7.4 details of any approved concessions;
  - 75.7.5 acquirer name and organisation;
  - 75.7.6 delivery address;
  - 75.7.7 contract item number;
  - 75.7.8 description of Article or Service including part number, specification and configuration status;
  - 75.7.9 identification marks, batch and serial number(s) in accordance with the specification; and
  - 75.7.10 quantities;
  - 75.7.11 a signed and dated statement by the Contractor that Articles or Services provided comply with the requirements of this Contract, and approved concessions;
  - 75.7.12 exceptions or additions to the above are to be documented.
- 75.8 Where the provisions of Schedule A (*Contractor's Obligations*) and the Quality Assurance Plan requires demonstration of traceability and design provenance through the supply chain, the Contractor shall include in any relevant Sub-Contract the requirement for the information called for in Clause 75.7 (*Quality Assurance*). The Contractor shall ensure that this information is available to the Authority through the supply chain, upon request in accordance with Clause 33 (*The Contractor's Records*).
- 75.9 The Contractor shall provide access to the information and data, and all reasonable assistance to the Authority (and shall procure the same for all Sub-Contractors) as is required for the Authority to audit the Contractor's quality management systems in accordance with RA4951.

**76 Social Value Plans**

- 76.1 The Contractor shall comply with each of the Social Value Plans as set out in Schedule U (*Social Value Plans*).

**77     Technical Compliance Matrix**

- 77.1    The Contractor shall provide the Services in accordance with the Authority approved Technical Compliance Matrix as set out in Schedule A Annex A (*Technical Compliance Matrix*) and of Schedule Q (*Contractor Proposed Solution*).

**PART 13 - TERMINATION**

**78     Termination for Contractor Default**

**Right to Terminate**

- 78.1    If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of Clause 78.2 (*Right to Terminate*) and subject to the provisions of Clauses 78.3 to 78.6 (inclusive) (*Rectification*).
- 78.2    If a Contractor Default has occurred (including a default as contemplated in Clause 78.14 (*Termination Following a Change of Control*)) and the Authority wishes to terminate the whole or any part of this Contract pursuant to this Clause 78 (*Termination for Contractor Default*), it must serve a notice (the "**Termination Notice**") on the Contractor stating:
- 78.2.1    that the Authority is terminating this Contract or part thereof for Contractor Default;
- 78.2.2    where relevant, the part of this Contract that the Authority is terminating;
- 78.2.3    the type and nature of the Contractor Default that has occurred, giving reasonable details; and
- 78.2.4    that this Contract or part thereof shall (subject to the provisions of Clauses 78.3 to 78.6 (inclusive) (*Rectification*)) terminate on the day (the "**Contractor Default Termination Date**") falling twenty (20) Working Days after the date the Contractor receives the Termination Notice.

**Rectification**

- 78.3    Where a Termination Notice cites a Contractor Default of the type and nature falling under limbs (a) – (g) of the definition of "Contractor Default", the Contractor shall, in consultation with the Authority, have the opportunity to set out within ten (10) Working Days or such other period as agreed between the Parties before the end of such ten (10) Working Day period how it intends to remedy such Contractor Default.
- 78.4    Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the Termination Notice in question shall be deemed to be revoked.
- 78.5    Where the Authority agrees with such proposed remedy, and the remedy is not implemented as agreed, the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date by which the remedy was agreed to be implemented.

- 78.6 If by the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, acting reasonably, may agree) the Authority considers that such proposed remedy will not restore the provision of the Contractor Deliverables or any portion thereof in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify the Contractor Default, the Authority may terminate the whole or the relevant part of this Contract forthwith (and the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date to be determined at the Authority's discretion)).

**Termination Date for Contractor Default**

- 78.7 Following the issue of a Termination Notice pursuant to Clause 78.2 (*Right to Terminate*) and where the Authority is terminating the whole of this Contract, this Contract shall (subject to the provisions of Clauses 78.3 to 78.6 (inclusive) (*Rectification*)) terminate on the Contractor Default Termination Date.

**Partial Termination**

- 78.8 Notwithstanding any other provision of this Contract, where the Authority is entitled to terminate this Contract for any reason, the Authority shall be entitled to terminate this Contract in whole or in part.
- 78.9 Where the Authority is terminating part of this Contract, the Parties shall, subject to Clause 82 (*Continuing Obligations*), owe each other no further obligations in respect of such part of this Contract as is specified in the Termination Notice from the Contractor Default Termination Date.
- 78.10 For the avoidance of doubt, where Clause 78.8 (*Partial Termination*) applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

**Termination following a Prohibited Act**

- 78.11 If the Contractor commits a Prohibited Act and/or breaches and/or is in default under Clauses 8.1.13, 8.1.14 and/or 8.1.15 (*Contractor warranties*), the Authority may (without prejudice to its rights in Clauses 14.11 and 14.12 (*Termination of Sub-Contractors*)) and subject to the provisions of Clause 78.12 (*Termination following a Prohibited Act*)) by notice:
- 78.11.1 require the Contractor to remove from performance of this Contract any Contractor Related Party, and any of the Contractor's employees, consultants, or agents whose acts or omissions have caused the default; or
  - 78.11.2 immediately terminate this Contract; and
  - 78.11.3 any notice served by the Authority under this Clause 78.11 (*Termination following a Prohibited Act*) shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

78.12 In exercising its rights and remedies in respect of a Prohibited Act, the Authority shall:

78.12.1 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; and

78.12.2 give all due consideration, where appropriate, to action other than termination of this Contract, including without being limited to:

(i) requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act was undertaken by or on behalf of a Sub-Contractor or anyone acting on its or their behalf; or

(ii) requiring the Contractor to procure the re-assignment of an employee, consultant or agent (whether its own or that of a Sub-Contractor or anyone acting on its behalf) from performing this Contract where the Prohibited Act is that of such employee, consultant or agent,

and the Contractor shall (and shall use all reasonable endeavours to procure that its Sub-Contractors shall) give all due consideration to the Authority's proposal under this Clause 78.12.2 (*Termination following a Prohibited Act*).

#### **Termination following withholding of Hazard Data**

78.13 As an alternative to terminating this Contract (or any part thereof) following a Contractor Default of the type described at limb (g) of the definition of that term, the Authority shall have the option to require the Contractor to rectify the relevant breach immediately at no additional cost to the Authority.

#### **Termination following a Change of Control**

78.14 If a Change of Control occurs in the circumstances described in Clause 87.5 (*Change of Control*), a Contractor Default shall be deemed to have occurred and the Authority shall be entitled to terminate the whole or any part of this Contract within twelve (12) months of the date the Authority became aware that the relevant Change of Control has occurred and such termination shall be subject to the provisions of Clause 78.2 (*Right to Terminate*) and shall not be subject to the provisions of Clauses 78.3 to 78.6 (inclusive) (*Rectification*).

#### **Material Breach**

78.15 In addition to any other rights and remedies, the Authority shall have the right to terminate this Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of its obligations under this Contract.

78.16 Where the Authority has terminated this Contract under Clause 78.15 (*Material Breach*) the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of this Contract, including but not limited to any costs and expenses incurred by the Authority in:

- 78.16.1 carrying out any work that may be required to make the Contractor Deliverables comply with this Contract; or
- 78.16.2 obtaining the Contractor Deliverable in substitution from another supplier.

**79 Termination for Convenience**

- 79.1 The Authority shall, in addition to its power under any other of the provisions of this Contract, have the power to determine this Contract at any time by giving to the Contractor at least twenty (20) Working Days written notice, and upon the expiration of such notice period this Contract shall terminate, without prejudice to the rights of the Parties already accrued as at the Termination Date, but subject to the operation of the following provisions of this Clause 79 (*Termination for Convenience*).
- 79.2 In the event of such notice being given, the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:
  - 79.2.1 to direct the Contractor, where provision of any element of the Contractor Deliverables has not been commenced, to refrain from commencing such provision;
  - 79.2.2 to direct the Contractor to complete the provision of any element of the Contractor Deliverables and/or to concentrate its efforts on the completion of any elements of the Contractor Deliverables where provision of the same (or any activities that are integral to such provision) has (or have) already commenced;
  - 79.2.3 to direct the Contractor to, as soon as may be reasonably practicable after the receipt of such notice, take such steps as will ensure that the rate of provision of the Contractor Deliverables (or the rate of performance of any activities that are integral to such provision) is reduced as rapidly as possible; and/or
  - 79.2.4 to direct the Contractor to determine on the best possible terms such Sub-Contracts and orders for materials, parts, components and/or services as have not been completed, observing in connection with this any direction given under Clauses 79.2.1 to 79.2.3 (inclusive) (*Termination for Convenience*) as far as may be possible.

**80 Financial consequences of Termination**

**Termination for Contractor Default**

- 80.1 Where this Contract or any part thereof is terminated pursuant to Clause 78 (*Termination for Contractor Default*), the provisions of Clauses 80.2 to 80.4 (inclusive) (*Termination for Contractor Default*) shall apply provided always that where such termination is as a result of an Insolvency Event the Contractor shall not be entitled to any compensation or any further payment from the Authority.

- 80.2 Where Clause 80.1 (*Termination for Contractor Default*) applies, and the Authority makes alternative arrangements for the provision of the Contractor Deliverables (which may, for the avoidance of doubt, include the Authority carrying out the Contractor Deliverables itself and/or through any Third Party), the Authority shall be entitled to recover from the Contractor the cost of tendering for and/or making such alternative arrangements, together with any additional expenditure incurred by the Authority as a result of such alternative arrangements throughout the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to Clause 78 (*Termination for Contractor Default*).
- 80.3 Where Clause 80.1 (*Termination for Contractor Default*) applies, the Contractor shall not be entitled to be paid any sums until the Authority has assessed the cost of the alternative arrangements referred to in Clause 80.2 (*Termination for Contractor Default*). If following such assessment, the amount of such Losses is less than the amount outstanding to the Contractor for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract, then the Authority shall pay the difference to the Contractor. The Authority shall complete such assessment, and the Parties shall complete the reconciliation process, within three (3) months of the Termination Date and payment shall be made within twenty (20) Working Days of such completion.
- 80.4 Where the Authority is entitled to terminate this Contract pursuant to Clause 78 (*Termination for Contractor Default*) as a result of the occurrence of a Prohibited Act (and/or the Contractor breaches and/or is in default under Clauses 8.1.13, 8.1.14 and/or 8.1.15 (*Contractor warranties*)), the Authority shall, in addition to its rights set out in Clauses 80.2 and 80.3 (*Termination for Contractor Default*) (but without any double-counting) be entitled to:
- 80.4.1 recover from the Contractor the amount of any Losses resulting from such termination;
  - 80.4.2 recover from the Contractor the amount or value of any gift, consideration or commission entailed by such Prohibited Act; and
  - 80.4.3 where this Clause 80.4 (*Termination for Contractor Default*) applies but this Contract has not been terminated, to recover from the Contractor any other Losses 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 80.4 (*Termination for Contractor Default*).
- 80.5 Where the Authority is entitled to terminate this Contract pursuant to Clause 93.5 (*Tax Compliance*), the Authority shall, subject to the provisions of Clause 93.7 (*Tax Compliance*) and in addition to the Authority's rights in Clauses 80.2 and 80.3 (*Termination for Contractor Default*) (but without double-counting), be entitled to recover from the Contractor:
- 80.5.1 the amount of any Losses resulting from such termination; and
  - 80.5.2 where this Clause 80.5 (*Termination for Contractor Default*) applies but where this Contract has not been terminated, any other Losses sustained

as a result of the breach by the Contractor giving rise to the Authority's rights in this Clause 80.5 (*Termination for Contractor Default*).

80.6 Where the Authority is entitled to terminate this Contract pursuant to Clause 40.17, 40.18 or 40.19 (*Cyber*), the Authority shall, subject to the provisions of Clause 40.16 (*Cyber*) and in addition to the Authority's rights in Clauses 80.2 and 80.3 (*Termination for Contractor Default*) (but without double-counting), be entitled to recover from the Contractor:

80.6.1 the amount of any Losses resulting from such termination;

80.6.2 any other Losses sustained in consequence of any breach of Clause 40.16 (*Cyber*); and

80.6.3 where this Clause 80.6 (*Termination for Contractor Default*) applies but where this Contract has not been terminated, any other Losses sustained as a result of the breach by the Contractor giving rise to the Authority's rights in this Clause 80.6 (*Termination for Contractor Default*).

#### **Termination for Convenience**

80.7 Where this Contract is terminated pursuant to Clause 79 (*Termination for Convenience*), the provisions of Clauses 80.8 to 80.10 (inclusive) (*Termination for Convenience*) shall apply.

80.8 Where Clause 79 (*Termination for Convenience*) applies (subject always to the Contractor's compliance with any direction given by the Authority pursuant to Clause 79.2 (*Termination for Convenience*)):

80.8.1 the Authority shall take over from the Contractor at a fair and reasonable price (to the extent the Contractor has not already been paid) all unused and undamaged materiel and any Contractor Deliverables which consist of physical items and are in the course of manufacture, that are:

(i) in the possession of the Contractor at the Termination Date; and

(ii) properly provided by or supplied to the Contractor for the performance of this Contract,

except such materiel and Contractor Deliverables that consist of physical items as the Contractor shall, with the agreement of the Authority, elect to retain;

80.8.2 without prejudice to any other obligations the Contractor may have in accordance with this Contract, the Contractor shall, at the Authority's request, grant a licence on the terms set out in Schedule S (*IPR*) at a fair and reasonable price (to the extent that the Contractor has not already been paid) to Use any Contractor Deliverable (or any elements thereof) that do not consist of physical items that have been provided or partially provided in accordance with this Contract at the Termination Date; and

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80.8.3 the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of:

- (i) all such unused and undamaged material; and
- (ii) the Contractor Deliverables that consist of physical items and are in the course of manufacture,

and in assessing a fair and reasonable price in Clauses 80.8.1 to 80.8.3 (inclusive) (*Termination for Convenience*) the Parties shall have due regard to the provisions of Schedule C (*Pricing and Payment*) and the Parties shall carry out a reconciliation for that purpose in accordance with paragraphs 3.22 of Schedule C (*Pricing and Payment*).

80.9 Where Clause 79 (*Termination for Convenience*) applies, the Authority shall (subject to Clause 80.10 (*Termination for Convenience*) and to the Contractor's compliance with any direction given by the Authority pursuant to Clause 79.2 (*Termination for Convenience*)) indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable Loss by the Contractor by reason of the termination of this Contract, subject to:

80.9.1 the Contractor taking all reasonable steps to mitigate such Loss; and

80.9.2 the Contractor submitting a fully itemised and costed list of such Loss, with supporting evidence of Losses reasonably and actually incurred by the Contractor as a result of termination of this Contract pursuant to Clause 79 (*Termination for Convenience*).

80.10 The Authority shall not be liable under Clause 80.9 (*Termination for Convenience*) to pay any sum which, when added to any sums already paid or due to the Contractor under this Contract, exceeds an amount equal to the Contract Price.

**Termination for Force Majeure**

80.11 Where this Contract is terminated pursuant to Clause 29.4 (*Force Majeure*), the provisions of Clauses 80.12 and 80.13 (*Termination for Force Majeure*) shall apply.

80.12 Where this Clause 80.12 (*Termination for Force Majeure*) applies, the Contractor shall only be entitled to be paid (subject to any other provision of this Contract affecting the level of such payment, including any reduction for sums that the Authority is entitled to deduct under or in connection with this Contract (whether arising under any term of this Contract or under any Legislation or of equity)) for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract and without prejudice to the foregoing the Authority may deduct from such payment any charges it has paid to the Contractor in advance in respect of Contractor Deliverables not provided as at the Termination Date. Neither Party shall have the right to claim damages as a result of such termination.

80.13 Where Clause 29.4 (*Force Majeure*) applies (subject always to the Contractor's compliance with Clause 29 (*Force Majeure*)):



80.13.1 the Authority shall take over from the Contractor at a fair and reasonable price (to the extent the Contractor has not already been paid) all unused and undamaged materiel and any Contractor Deliverables which consist of physical items and are in the course of manufacture, that are:

- (i) in the possession of the Contractor at the Termination Date; and
- (ii) properly provided by or supplied to the Contractor for the performance of this Contract,

except such materiel and Contractor Deliverables that consist of physical items as the Contractor shall, with the agreement of the Authority, elect to retain;

80.13.2 without prejudice to any other obligations the Contractor may have in accordance with this Contract, the Contractor shall, at the Authority's request, grant a licence on the terms set out in Schedule S (*IPR*) at a fair and reasonable price (to the extent that the Contractor has not already been paid) to Use any Contractor Deliverable (or any elements thereof) that do not consist of physical items that have been provided or partially provided in accordance with this Contract at the Termination Date; and

80.13.3 the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of:

- (i) all such unused and undamaged materiel; and
- (ii) the Contractor Deliverables that consist of physical items and are in the course of manufacture,

that are liable to be taken over by, licensed to or previously belonged to the Authority and shall deliver such materiel and the Contractor Deliverables in accordance with the directions of the Authority,

and in assessing a fair and reasonable price in Clauses 80.13.1 to 80.13.3 (inclusive) (*Termination for Force Majeure*) the Parties shall have due regard to the provisions of Schedule C (*Pricing and Payment*) and the Parties shall carry out a reconciliation for that purpose.

#### **Miscellaneous provisions**

80.14 Where on the Termination Date or the Expiry Date (as the case may be) the Parties:

80.14.1 agree all amounts which are due to each other arising under this Contract, each Party shall (subject to the provisions of Clause 20 (*Recovery of Sums Due*)) pay to the other any amounts payable pursuant to this Clause 80 (*Financial Consequences of Termination*) within twenty (20) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period; or

- 80.14.2 do not agree what amounts are due to each other arising under this Contract, the Parties shall carry out a reconciliation within ten (10) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period.

**Exit Requirements**

- 80.15 On the expiry or early termination of this Contract, the Contractor shall comply with the provisions of Clause 81 (*Exit Plan*) and Clause 83 (*Continuing Assistance*).
- 80.16 If the Contractor fails to comply with Clause 81 (*Exit Plan*) and/or Clause 83 (*Continuing Assistance*), the Authority reserves the right to withhold any outstanding payments due to the Contractor under this Contract until full compliance with Clause 81 (*Exit Plan*) and/or Clause 83 (*Continuing Assistance*) has been achieved.

**81 Exit Plan**

- 81.1 Not used.

- 81.2 On the earlier to occur of:

- 81.2.1 six (6) calendar months before the Expiry Date; and
- 81.2.2 ten (10) Working Days following receipt of a written notice from the Authority of the termination or partial termination of this Contract;

the Authority and the Contractor shall agree the Exit Plan which shall include, but not be limited to, the following (as applicable):

- (i) a plan for how the Contractor will manage the return to the Authority of any GFX or Issued Property under this Contract;
- (ii) procedures to deal promptly with any requests for information from the Authority and/or a Follow-On Contractor in respect of any transfer of staff pursuant to Schedule N (*Transfer Regulations (TUPE)*);
- (iii) a plan for how the Contractor will meet its obligations contained in Clause 83 (*Continuing Assistance*);
- (iv) a plan for how the Contractor will carry out the transition of the processes, documentation, data transfer, systems migration and security to the Authority;
- (v) a plan for how the Contractor will meet its obligations contained in Schedule S (*IPR*); and
- (vi) any other information that the Authority reasonably requires at the time of preparing the Exit Plan.

- 81.3 Not applicable.

- 81.4 Not applicable.
- 81.5 Not applicable.
- 81.6 Not applicable.
- 81.7 Except in respect of any transfer of staff pursuant to Schedule N (*Transfer Regulations (TUPE)*), the Contractor shall not (except with the prior written consent of the Authority) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Authority any person employed or engaged by the Authority in the receipt of the Contractor Deliverables at any time during the Contract Period or for a further period of twelve (12) months after the Expiry Date other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the Authority.
- 81.8 If the Contractor commits any breach of Clause 81.7 (*Exit Plan*), the Contractor shall, on demand, pay to the Authority a sum equal to one (1) year's basic salary or the annual fee that was payable by the Contractor to that employee, worker or independent Contractor plus the recruitment costs incurred by the Authority in replacing such person.

**82 Continuing Obligations**

- 82.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract:
- 82.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and
- 82.1.2 termination of this Contract shall not affect the continuing rights and Schedule A (*Contractor's Obligations*) and the Authority under:
- (i) Clause 3 (*The Contractor's Obligations*);
  - (ii) Clause 8 (*Contractor Warranties and Undertakings*);
  - (iii) Clause 15 (*Import and Export Licences*);
  - (iv) Clause 26 (*Indemnity and Liabilities*);
  - (v) Clause 33 (*The Contractor's Records*);
  - (vi) Clause 35 (*Disclosure of Information*);
  - (vii) Clause 38.2 (*Official-Sensitive Security Requirements*);
  - (viii) Clause 40 (*Cyber*), to the extent contemplated in Clause 40.20 (*Cyber*);
  - (ix) Clause 41 (*Intellectual Property Rights*);
  - (x) Clause 43 (*Security Aspects Letter*);

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- (xi) Clause 44 (*Security Conditions*);
- (xii) Clause 50 (*Transfer of Undertakings (Protection of Employment) (TUPE)*);
- (xiii) Clause 60 (*Issued Property*);
- (xiv) Clause 61 (*Accounting for property of the Authority*);
- (xv) Clause 80 (*Financial consequences of Termination*);
- (xvi) Clause 81 (*Exit Plan*);
- (xvii) Clause 82 (*Continuing Obligations*);
- (xviii) Clause 83 (*Continuing Assistance*);
- (xix) Clause 93 (*Tax Compliance*);
- (xx) Clause 96 (*Dispute Resolution*);
- (xxi) Clause 101 (*Law*); and
- (xxii) any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

**PART 14 - GENERAL CONTRACT PROVISIONS**

**83 Continuing Assistance**

**Co-operation**

- 83.1 Without prejudice to the provisions of Clause 50 (*Transfer of Undertakings (Protection of Employment) (TUPE)*) and Clause 81 (*Exit Plan*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting the Contractor shall co-operate as far as is reasonably practicable with the transfer of responsibility for the provision of the Contractor Deliverables (or part of the Contractor Deliverables) (including co-operation with one or more Other Contractors with responsibility for providing deliverables to the Authority with which the whole or part of such Contractor Deliverables are intended to interface (including by any technical and/or organisational interface) and/or integrate (including Integrate) and/or be compatible with and/or in respect of which the performance of such deliverables by such Other Contractor is connected with and/or dependent upon and/or for which it is necessary to have an understanding of, in each case, such whole or part of the Contractor Deliverables) from the Contractor to any person (a "**Follow-On Contractor**") or to the Authority as so directed by the Authority, and for the purposes of this Clause 83 (*Continuing Assistance*) the meaning of the term co-operate shall include:

- 83.1.1 liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the provision of the whole or

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the relevant part of the Contractor Deliverables and their transfer to the Authority or such Follow-On Contractor;

- 83.1.2 allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to any assets applicable to the performance of this Contract, but not so as to interfere with or impede the provision of the Contractor Deliverables; and
  - 83.1.3 providing to the Authority and/or any Follow-On Contractor any relevant information concerning the Authority Sites and the provision of the Contractor Deliverables which is reasonably required for the efficient transfer of responsibility for the performance of the Contractor's obligations under this Contract.
- 83.2 Without prejudice to Clause 60 (*Issued Property*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting, the Contractor shall protect and preserve material, Articles and Issued Property in its possession, custody or control in which the Authority has notified an interest, provided that the Contractor shall be entitled to use such material, Articles and Issued Property in accordance with the provisions of this Contract where it is agreed that the provision of the Contractor Deliverables requires the use of that material and/or those Articles and/or Issued Property in part or in its entirety.
- 83.3 For a period of six (6) months after the Expiry Date or, if earlier, the Termination Date, the Contractor shall, if requested to do so in writing by the Authority, provide all reasonable assistance, guidance and information to the Authority or any Follow-On Contractor (as the case may be) required by the Authority or any Follow-On Contractor.
- 83.4 Without prejudice to the provisions of Clauses 83.1, 83.2 and 83.3 (*Co-operation*), the Contractor shall use all reasonable endeavours to assist the Authority to facilitate the smooth transfer of responsibility for the provision of the Contractor Deliverables (or any part of the Contractor Deliverables) to the Authority or Follow-On Contractor, as the case may be, and the Contractor shall take no action at any time during the term of this Contract or thereafter which is calculated or intended to prejudice or frustrate or make more difficult any such transfer.
- 83.5 Following the Expiry Date or, if earlier, the Termination Date, the Contractor shall, with the Authority's consent (not to be unreasonably withheld or delayed) be allowed reasonable access to the Authority Sites by the Authority in order to carry out winding-down activities, provided that in exercising such right of access, the Contractor shall not interfere with or impede the delivery of goods and/or services equivalent to the Contractor Deliverables (and/or the provision of any other services and/or the carrying out of any other activities) by or on behalf of the Authority and/or any Follow-On Contractor.
- 83.6 On expiry or earlier termination of this Contract, the Contractor shall:
- 83.6.1 upon request by the Authority make arrangements, to be agreed between the Authority and the Contractor (acting reasonably and in good faith), for the Authority to take over at fair and reasonable prices, where payment has not already been made, the rights, title and interest in such Articles and/or material as are held by the Contractor and/or any Sub-Contractor and which

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the Authority requires to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Expiry Date or, if earlier, the Termination Date; and

83.6.2 provide, procure the provision of, or provide access to, as the Authority may require, all such information, documents and data in the possession or control of the Contractor, together with a sufficient explanation of such information, documents and data, the full rights to use such information, documents and data, and a formal certificate confirming those rights, as is required to put the Authority in the position it would have been had there been full and proper performance by the Contractor of the Contractor Deliverables.

83.7 The Contractor agrees that following the early termination of this Contract, the Authority shall be entitled to continue to purchase (and the Contractor shall continue to supply) on reasonable terms and conditions at fair and reasonable prices goods and services (which would, but for the expiry or early termination of this Contract, amount to Articles) which are required by the Authority to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Termination Date.

**84 Change**

84.1 Without prejudice to the provisions of Clause 5 (*Ad Hoc Task Order Approval Process*), the Parties shall comply with the provisions of the Clause 84 (*Change*) in relation to Changes.

**Authority Changes**

84.2 The Authority shall be entitled to propose any change to the Contract (a "**Change**") or (subject to Clause 84.3).

84.3 Nothing in this Clause shall operate to prevent the Authority from specifying more than one Change in any single proposal, provided that such changes are related to the same or similar matter or matters.

**Notice of Change**

84.4 If the Authority wishes to propose a Change or Changes, it shall serve a written notice (an "**Authority Notice of Change**") on the Contractor.

84.5 The Authority Notice of Change shall set out the Change(s) proposed by the Authority in sufficient detail to enable the Contractor to provide a written proposal (a "**Contractor Change Proposal**") in accordance with Clauses 84.8 to 84.10 (inclusive).

84.6 The Contractor may only refuse to implement a Change or Changes proposed by the Authority, if such change(s):

84.6.1 would, if implemented, require the Contractor to deliver any Contractor Deliverables under the Contract in a manner that infringes any applicable law relevant to such delivery; and/or

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- 84.6.2 would, if implemented, cause any existing consent obtained by or on behalf of the Contractor in connection with their obligations under the Contract to be revoked (or would require a new necessary consent to be obtained to implement the Change(s) which, after using reasonable efforts, the Contractor has been unable to obtain or procure and reasonably believes it will be unable to obtain or procure using reasonable efforts); and/or
- 84.6.3 would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under the Contract; and:
- 84.6.4 the Contractor notifies the Authority within 10 (ten) Working Days (or such longer period as shall have been agreed in writing by the parties) after the date of the Authority Notice of Change that the relevant proposed Change or Changes is/are a Change(s) falling within the scope of Clauses 84.6.1, 84.6.2 and/or 84.6.3 providing written evidence for the Contractor's reasoning on the matter; and
- 84.6.5 further to such notification:
- (i) either the Authority notifies the Contractor in writing that the Authority agrees, or (where the Authority (acting reasonably) notifies the Contractor that the Authority disputes the Contractor's notice under Clause 84.5) it is determined in accordance with 96 (*Dispute Resolution (English Law)*), that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 84.6.1, 84.6.2 and/or 84.6.3; and
  - (ii) (where the Authority either agrees or it is so determined that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 84.6.1, 84.6.2 and/or 84.6.3), the Authority fails to make sufficient adjustments to the relevant Authority Notice of Change (and issue a revised Authority Notice of Change) to remove the Contractor's grounds for refusing to implement the relevant Change under Clauses 84.6.1, 84.6.2 and/or 84.6.3 within 10 (ten) Working Days (or such longer period as shall have been agreed in writing by the parties) after:
    - (A) the date on which the Authority notifies in writing the Contractor that the Authority agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 84.6.1, 84.6.2 and/or 84.6.3); or
    - (B) the date of such determination.
- 84.7 The Contractor shall at all times act reasonably, and shall not seek to raise unreasonable objections, in respect of any such adjustment.

**Contractor Change Proposal**

84.8 As soon as practicable, and in any event within:

84.8.1 (where the Contractor has not notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 84.6.1, 84.6.2 and/or 84.6.3 in accordance with Clause 84.6) fifteen (15) Working Days (or such other period as the Parties agree (acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contractor shall have received the Authority Notice of Change; or

84.8.2 where the Contractor has notified the Authority that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 84.6.1, 84.6.2 and/or 84.6.3 in accordance with Clause 84.6; and:

(i) the Authority has agreed with the Contractor's conclusion so notified or it is determined under Clause 96 (*Dispute Resolution (English Law)*) that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 84.6.1, 84.6.2 and/or 84.6.3 and the Authority has made sufficient adjustments to the relevant Authority Notice of Change (and issued a revised Authority Notice of Change(s)) to remove the Contractor's grounds for refusing to implement the relevant Change(s) under Clauses 84.6.1, 84.6.2 and/or 84.6.3) fifteen (15) Working Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date on which the Contractor shall have received such revised Authority Notice of Change; or

(ii) the Authority has disputed such conclusion and it has been determined in accordance with Clause 96 (*Dispute Resolution (English Law)*) that the relevant Change(s) is/are not a Change(s) falling within the scope of Clauses 84.6.1, 84.6.2 and/or 84.6.3) fifteen (15) Working Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date of such determination, the Contractor shall deliver to the Authority a Contractor Change Proposal. For the avoidance of doubt, the Contractor shall not be obliged to deliver to the Authority a Contractor Change Proposal where the Contractor notifies the Authority, and the Authority agrees or it is determined further to such notification in accordance with Clause 84.6 that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 84.6.1, 84.6.2 and/or 84.6.3.

84.9 The Contractor Change Proposal shall comprise in respect of each and all Change(s) proposed:

84.9.1 the effect of the Change(s) on the Contractor's obligations under the Contract;

84.9.2 a detailed breakdown of any costs which result from the Change(s);

84.9.3 the programme for implementing the Change(s);



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- 84.9.4 any amendment required to this Contract as a result of the Change(s), including, where appropriate, to the Contract Price; and
- 84.9.5 such other information as the Authority may reasonably require.
- 84.10 The price for any Change(s) shall be based on the prices (including rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change(s).

**Contractor Change Proposal – Process and Implementation**

- 84.11 As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
  - 84.11.1 evaluate the Contractor Change Proposal; and
  - 84.11.2 where necessary, discuss with the Contractor any issues arising (and (in relation to a Change(s) proposed by the Authority) following such discussions the Authority may modify the Authority Notice of Change) and the Contractor shall as soon as practicable, and in any event not more than ten (10) Working Days (or such other period as the Parties shall have agreed in writing) after receipt of such modification, submit an amended Contractor Change Proposal.
- 84.12 As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
  - 84.12.1 either indicate its acceptance of the Contractor Change Proposal by Issuing a serially numbered amendment letter in accordance with Clauses 84.16 (*Formal Amendments to the Contract*), whereupon the Contractor shall promptly issue to the Authority the Contractor's DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations under, Clauses 84.16 to 84.18 (*Formal Amendments to the Contract*), and implement the relevant Change(s) in accordance with such proposal; or
  - 84.12.2 serve a notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued in relation to a Change or Changes proposed by the Authority) the Authority Notice of Change (in which case such notice of change shall have no further effect).
- 84.13 If the Authority rejects the Contractor Change Proposal, it shall not be obliged to give its reasons for such rejection.
- 84.14 The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred in connection with the implementation of any Change(s), unless a Contractor Change Proposal has been accepted by the Authority in accordance with Clause 84.12.1 and then subject only to the terms of the Contractor Change Proposal so accepted.

**Contractor Changes**

- 84.15 If the Contractor wishes to propose a Change or Changes, they shall serve a Contractor Change Proposal on the Authority. Such proposal shall be prepared and reviewed in accordance with and otherwise be subject to the provisions of Clauses 84.8 to 84.14 (inclusive).

**Formal Amendments to Contract**

- 84.16 Subject to Clause 84.18, the Contract may only be amended by the written agreement of the parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:

84.16.1 Authority Notice of Change (where used);

84.16.2 the Authority's offer set out in a serially numbered amendment letter issued by the Authority to the Contractor; and

84.16.3 the Contractor's unqualified acceptance of such offer as evidenced by the Contractor's duly signed DEFFORM 10B.

- 84.17 Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.

- 84.18 Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of the amendment the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643 (Price Fixing (Non-qualifying contracts)) or DEFCON 127 (Price Fixing Condition for Contracts of Lesser Value). Where DEFCON 643 is used, the Contractor shall make all appropriate arrangements with all of its sub-contractors affected by the Change or Changes in accordance with Condition 5 of DEFCON 643.

**Changes to the Specification**

- 84.19 For the purposes of the Contract "the Specification" shall include any document or item which, individually or collectively, is referenced in the Schedule B1 (*Contract Data Deliverables*). The Specification forms part of this Contract and all Contractor Deliverables to be supplied by the Contractor under this Contract shall conform in all respects with the Specification.

- 84.20 The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

**85 Transfer**

- 85.1 Subject to Clause 86 (*Novation*), neither Party to this Contract shall give, bargain, sell, assign, or otherwise dispose of this Contract or any part thereof, or the benefit or advantage of this Contract or any part thereof, without the prior consent in writing of the other Party.

- 85.2 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Clause 85.1 (*Transfer*) above, 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 this Contract (including any interest incurred by the Authority in accordance with Clause 18 (*Disputed Amounts*)).
- 85.3 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under Clause 85.2 (*Transfer*) above shall be subject to:
- 85.3.1 reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 20 (*Recovery of Sums Due*) or under any other clause concerning recovery of sums due;
  - 85.3.2 all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and
  - 85.3.3 the Authority receiving notification under both Clause 85.4 and Clause 85.5.2 (*Transfer*) below.
- 85.4 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 85.2 (*Transfer*) above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 85.5 The Contractor shall ensure that the Assignee:
- 85.5.1 is made aware of the Authority's continuing rights under Clauses 85.3.1 and 85.3.2 (*Transfer*); and
  - 85.5.2 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 85.3.1 and 85.3.2 (*Transfer*) above.
- 85.6 The provisions of this Contract, including any clauses concerning payment, shall continue to apply in all other respects after any assignment in accordance with this Clause 85 (*Transfer*) and shall not be amended without the prior approval of the Authority.
- 86 Novation**
- 86.1 Subject to Clause 86.2 (*Novation*), the rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any law or any scheme pursuant to any law or otherwise) other than:
- 86.1.1 in respect of the whole of this Contract to any person who performs any of the functions that previously had been performed by the Authority; or
  - 86.1.2 to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract, being:

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- (i) a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975; or
- (ii) any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

86.2 The Contractor agrees that the Authority may at any time on written notice elect to appoint a Third Party to act as its agent to manage the whole or any part of this Contract on the Authority's behalf and/or to perform any or all of the obligations of the Authority under this Contract to the extent set out in such notice.

**87 Change of Control**

87.1 The Contractor acknowledges that the Authority has a legitimate interest in the ownership and control of the Contractor and that the Contractor is required to notify the Authority of any Change of Control in accordance with this Clause 87 (*Change of Control*).

87.2 Subject to Clause 87.3 (*Change of Control*), the Contractor shall notify the Authority's Representative in writing (providing a copy to the Mergers & Acquisitions Section, Strategic Supplier Management Team, Spruce 3b #1301, MOD Abbey Wood, Bristol, BS34 8JH and emailing a copy to DefComrcISSM-MergersandAcq@mod.gov.uk), as soon as practicable, of any intended, planned or actual Change of Control, including details of the proposed new ownership structure (legal and beneficial) and/or details of the material asset (including shares held in any company by the Contractor or any of its Subsidiaries), business or undertaking proposed to be disposed or acquired (as the case may be).

87.3 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.

87.4 The Representative of the Authority shall 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 Contract Award.

87.5 Where:

87.5.1 the Authority is not informed of a proposed Change of Control for the reasons set out in Clause 87.3 (*Change of Control*) or for any other reason and a Change of Control occurs; and/or

87.5.2 the Authority objects to the proposed (or actual) Change of Control, whether or not the Authority is informed of the proposed Change of Control pursuant to Clause 87.2 (*Change of Control*) and whether the Authority becomes

aware of such Change of Control prior to or after such Change of Control occurring,

then the Authority may terminate this Contract at any time within twelve (12) months of the date the Authority becomes aware that the relevant Change of Control has occurred and the provisions of Clause 78.2 (*Termination for Contractor Default*) and Clause 78.14 (*Termination following a Change of Control*) shall apply.

- 87.6 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 this Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Clause 87 (*Change of Control*).

**88 Disruption**

- 88.1 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.

- 88.2 The Contractor shall have robust contingency plans in place to ensure that the provision of the Contractor Deliverables is maintained in the event of any disruption (including disruption to information technology systems) to the operations of the Contractor and/or any Sub-Contractor. Such contingency plans shall be available for the Authority to:

88.2.1 inspect; and/or

88.2.2 (subject to the Authority giving the Contractor reasonable advance notice, and subject to the Authority exercising this right a maximum of three (3) times in any one year in respect of the same plan) practically test at any reasonable time,

and shall be updated and revised as necessary by the Contractor throughout the Contract Period.

**89 Waiver**

- 89.1 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.

- 89.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

**90 Discrepancies, Errors and Omissions**

- 90.1 If either Party identifies any discrepancy, error or omission between the provisions of this Contract, it shall notify the other Party in writing of such discrepancy, error or omission as soon as reasonably practical.

90.2 The Parties shall seek to agree such amendments to resolve such discrepancy, error or omission as soon as reasonably practical.

90.3 Where the Parties fail to reach agreement within ten (10) Working Days of the notice under Clause 90.1 (*Discrepancies, Errors and Omissions*) and either Party considers that the discrepancy, error or omission to be material to its rights and obligations under this Contract, then the matter will be referred to the Dispute Resolution Procedure.

## **91 Severability**

91.1 If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:

91.1.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in this Contract, but without invalidating any of the remaining provisions of this Contract; and

91.1.2 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.

## **92 Whole Agreement**

92.1 Any works performed and any obligations under the FTUAS Early Works Contract shall be incorporated into the terms of this Contract, and the terms of this Contract shall apply to the FTUAS Early Works Contract.

92.2 Following the incorporation of the FTUAS Early Works Contract into this Contract, Clause 92.1 above, this will then constitute the entire agreement between the Parties relating to the subject matter of this Contract.

92.3 This Contract supersedes all prior negotiations, representations and undertakings (whether written or oral), except that this Clause 92 (*Whole Agreement*) shall not exclude liability in respect of any fraudulent misrepresentation.

## **93 Tax Compliance**

93.1 The Contractor represents and warrants that at the date this Contract came into effect, it has notified the Authority in writing of any Occasion Of Tax Non-Compliance ("OOTNC") or any litigation that it is involved in that is in connection with any OOTNC.

93.2 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:

93.2.1 notify the Authority in writing of such fact within twenty (20) Working Days of its occurrence; and

93.2.2 promptly provide to the Authority:

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- (i) details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (ii) such other information in relation to the OOTNC as the Authority may reasonably require.

93.3 For the avoidance of doubt, the obligation at Clause 93.2 (*Tax Compliance*) also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.

93.4 The duty to notify does not substitute the Contractor's other reporting obligations under this Contract.

93.5 The Authority shall be entitled to terminate this Contract in the event that:

93.5.1 the warranty given by the Contractor pursuant to Clause 93.1 (*Tax Compliance*) is materially untrue; or

93.5.2 the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 93.2 (*Tax Compliance*); or

93.5.3 the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.

93.6 In the event that the Authority is entitled to terminate this Contract under Clause 93.5 (*Tax Compliance*) the provisions of Clause 80.5 (*Termination for Contractor Default*) and Clause 93.7 (*Tax Compliance*) shall apply.

93.7 In exercising its rights or remedies under this Clause 93 (*Tax Compliance*), the Authority shall:

93.7.1 act in a reasonable and proportionate manner taking into account, among other things:

(i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and

(ii) any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC; and

93.7.2 without prejudice to Clause 93.5 (*Tax Compliance*), seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the Contractor to comply with this Clause 93 (*Tax Compliance*).

**94 Representatives**

**References to Authority and the Contractor**

- 94.1 Except as provided otherwise under this Contract, any reference to the Authority and the Contractor in respect of:

- 94.1.1 the giving of consent;
- 94.1.2 the delivering of any notices; or
- 94.1.3 the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party,

shall be deemed to be references to the Authority's Representatives and the Contractor's Representatives (respectively) in accordance with this Clause 94 (*Representatives*).

**The Contractor's Representatives**

- 94.2 The Contractor shall employ the Contractor's Representatives to act in connection with the provision of the Contractor Deliverables and generally in connection with this Contract.

**Authority of the Contractor's Representatives**

- 94.3 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract.

**Appointment of successor**

- 94.4 The Contractor may terminate the appointment of any Contractor's Representative and shall appoint a successor, the identity of whom shall be made known to the Authority.

**Authority's Representatives**

- 94.5 The Authority shall employ the Authority's Representatives to act in connection with the provision of the Contractor Deliverables and generally in connection with this Contract.

**Authority of Authority's Representatives**

- 94.6 The Authority's Representative shall have the full authority to act on behalf of the Authority for all purposes of this Contract.

**Appointment of Successor**

- 94.7 The Authority may terminate the appointment of any Authority's Representative and shall appoint a successor, the identity of whom shall be made known to the Contractor.

**95 Notices**

- 95.1 All notices, orders, or other forms of communication required to be given in writing ("**Notices**") under or in connection with this Contract shall:

- 95.1.1 be in a form which can be read, copied and recorded;



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- 95.1.2 be authenticated by signature or by such other method as agreed between the Parties;
  - 95.1.3 be marked for the attention of the appropriate Authority's Representative or the Contractor's Representative; and
  - 95.1.4 be marked in a prominent position with the relevant Contract number.
- 95.2 Notices should be delivered by:
- 95.2.1 hand;
  - 95.2.2 prepaid post (or airmail, in the case of Notices to or from overseas);
  - 95.2.3 facsimile; or
  - 95.2.4 electronic mail.
- 95.3 Notices shall be deemed to have been received:
- 95.3.1 if delivered by hand, on the day of delivery if it is a Working Day and otherwise on the first Working Day immediately following the day of delivery;
  - 95.3.2 if sent by prepaid post (or airmail, if appropriate), on the fifth Working Day (or on the tenth Working Day, in the case of airmail) after the day of posting; and
  - 95.3.3 if sent by facsimile, or other electronic means:
    - (i) if transmitted between 09.00 and 17.00 hours on a Working Day (recipient's time), on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
    - (ii) if transmitted at any other time, at 09.00 hours on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- 95.4 The addresses (including electronic addresses) of each Party and their Representatives to which all Notices shall be sent are set out in Schedule W (*Addresses and Other Information (DEFFORM 111)*), or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 95 (*Notices*).
- 95.5 Where either Party requests written confirmation of any communication which does not constitute a Notice, such request shall not unreasonably be refused.

**96 Dispute Resolution**

- 96.1 The Parties will attempt in good faith to resolve any Dispute 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 ("ADR") procedure on which the Parties may agree.

- 96.2 In the event that the Dispute is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the Dispute shall be referred to arbitration.
- 96.3 The Party initiating the arbitration shall give a written notice (the "**Notice of Arbitration**") to the other Party. The Notice of Arbitration shall specifically state:
- 96.3.1 that the Dispute is referred to arbitration; and
- 96.3.2 the particulars of this Contract out of or in relation to which the Dispute arises.
- 96.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 96 (*Dispute Resolution (English Law)*) shall be governed by the provisions of the Arbitration Act 1996.
- 96.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in section 39 of the Arbitration Act 1996.
- 96.6 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

**97 Contractor's Status**

- 97.1 Nothing in this Contract shall be construed as creating a partnership or joint venture or as a contract of employment between the Authority and Contractor.
- 97.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, nor 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.
- 97.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

**98 Conflicts of Interest and Impartiality**

- 98.1 The Contractor has notified the Authority of its intention to operate a conflicts of interest regime ("**Conflicts Regime**"), the Contractor acknowledging that its obligations under this Contract and its aspiration to participate to be a provider of goods and/or services in future procurements connected with the FTUAS Programme will require the careful management of information both internally and externally by the Contractor and Contractor Related Parties.

- 98.2 Notwithstanding the full adherence by the Contractor to the provisions of the Conflicts Regime, the Authority reserves the right to exclude the Contractor from participation in any future procurements contemplated in Clause 98.1 (*Conflicts of Interest and Impartiality*) (whether to comply with law, as may be permitted in accordance with the regulations applying to any such future procurements or for any reason to ensure fair competition for such procurements).

**99 Decoupling**

- 99.1 If the Contractor shall enter into any other contract with the Crown relating in any way to the subject matter of this Contract, then, no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:

99.1.1 give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority; or

99.1.2 affect, modify, reduce or extinguish either the Schedule A (Contractor's Obligations) or the rights or remedies of the Authority; or

99.1.3 be taken to amend, add to, delete or waive any term or condition of this Contract.

**100 Rights of Third Parties**

- 100.1 Except as provided in Clause 100.2 (*Rights of Third Parties*) and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to enforce any term of this Contract in his own right and the Parties declare that they have no intention to grant any such right.

- 100.2 Where, and only where, this Contract expressly states that a Third Party shall be entitled to enforce a term of this Contract:

100.2.1 the said Third Party shall be entitled to enforce that term in his own right;

100.2.2 the Contractor shall inform the said Third Party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause 100.2 (*Rights of Third Parties*)) relevant to the exercise of that right; and

100.2.3 the Third Party's rights shall be subject to:

(i) the resolution of any Dispute pursuant to the Dispute Resolution Procedure; and

(ii) Clause 101 (*Law*).

**101    Law**

101.1 This Contract shall be considered as a contract made in England and subject to English Law.

101.2 Subject to and without prejudice to the Dispute Resolution Procedure, each Party hereby irrevocably 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 this Contract or breach thereof.

101.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause 101 (Law) and for the enforcement of any judgement, order or award given under English jurisdiction.

**102    Not used.**

**103    Counterparts**

103.1 This Contract may be entered into in any number of counterparts and each of the executed counterparts, when duly executed and delivered, shall be deemed to be an original but, taken together, they shall constitute one and the same instrument.

**IN WITNESS** this document has been duly executed by the Parties on the date which appears at the head of page 1.

OFFICIAL-SENSITIVE COMMERCIAL

Signed by ..... )  
[title] )

for and on behalf of **THE SECRETARY OF  
STATE FOR DEFENCE** ) .....

Signature

.....  
Name

Executed by [●] acting by [NAME OF  
DIRECTOR], a director and [NAME OF  
SECOND DIRECTOR/SECRETARY], [a  
director **OR** its secretary]: )  
 )  
 ) .....

Director's signature

.....  
[Director's signature **OR** Secretary's  
signature]