



Strategic Command
Defence Digital

SATCOM Programme

Future Protected Modem - A

Contract Reference: 704130451

Version 1.1



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THIS CONTRACT shall come into effect on the date of signature by both parties

BETWEEN

- (1) **THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND** (the "**Authority**"); and
- (2) Airbus Defence and Space Limited (Company No. 02449259) whose registered office is at [REDACTED] (the "**Contractor**"), each a "**Party**" and together the "**Parties**".

For and on behalf of the Secretary of State for Defence:

Name and Title	[REDACTED]
Signature	[REDACTED]
Date	12 November 2024

For and on behalf of Airbus Defence and Space Limited (the "Contractor"):

Name and Title	[REDACTED]
Signature	[REDACTED]
Date	11 November 2024

BACKGROUND

- (A) The Skynet 6 Programme is the Authority's programme to procure the assets and services necessary to maintain the United Kingdom's military satellite communications capability via the Skynet System beyond the expiry of the Skynet 5 Contract for Implementation and Service Delivery in August 2022.
- (B) The aim of the Future Protected Modem – A (FPM-A) Project is to mitigate the obsolescence issue to the current Paradigm Modem System by providing a functionally equivalent capability, capitalising on advancements in technology to deliver a better suited modem system to the British Armed Forces.
- (C) On 03 May 2023, the Authority issued an Invitation to Negotiate (ITN) to the Contractor and other bidders. On the basis of the Contractor's ITN responses as further amplified by subsequent negotiations, the Authority has awarded this Contract to the Contractor and the Contractor has agreed to provide FPM-A in accordance with the terms set out below.

Part 1 General

1. Definition and Interpretations

- 1.1 The meanings of expressions used in this Contract and the interpretation of this Contract shall be as described in Schedule 1 (Definitions and Interpretation).
- 1.2 No DEFCON or DEFSTAN shall apply to this Contract unless it is expressly incorporated in or referred to in this Contract as applying to this Contract.

2. Duration of Contract

- 2.1 This Contract comes into effect on the Effective Date and will expire automatically on the Expiry Date unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

3. Warranties

- 3.1 Without prejudice to any warranties or conditions implied by Law, the Contractor represents and warrants that as at the Effective Date:
 - (a) the Contractor:
 - (i) is properly constituted and incorporated under the Laws of England and Wales; and
 - (ii) has the corporate power to own its assets and to carry on its business as it is now being conducted;
 - (b) the Contractor has all necessary power, authority and capacity to enter into and to exercise its rights, perform its obligations and discharge its liabilities under this Contract;
 - (c) the execution, delivery and performance of this Contract by the Contractor does not in any case contravene:
 - (i) any provision of any Law either in force or enacted but not yet in force binding on the Contractor;
 - (ii) any order or decree of any court of competent jurisdiction;
 - (iii) any obligation which is binding upon the Contractor or upon any of its assets; or
 - (iv) the Contractor's constitutional documents;
 - (d) no claim, demand, proceedings or liability is presently being assessed and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Contractor, having made all due enquiry, pending or threatened against the Contractor or any of its assets or revenues which would have a material adverse effect on the ability of the Contractor to perform its obligations and discharge its liabilities under this Contract;
 - (e) no proceedings or other steps have been taken and not discharged (nor to the best of the knowledge of the Contractor, having made all due enquiry, threatened) for the winding-up or dissolution of the Contractor or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues or the assets or revenues whether in the UK or otherwise and the Contractor is not insolvent nor unable to pay its debts and could not be deemed by a court to be unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 nor will it become so in consequence of entering into this Contract or performing the obligations contemplated thereby; and
 - (f) it is not subject to any other obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract.

4. Entire Agreement

- 4.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

5. Governing Law

- 5.1 Subject to Clause 5.4, the Contract shall be considered as a contract made in England and subject to English Law.

- 5.2 Subject to Clause 5.4 and Clause 65 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- 5.3 Subject to Clause 5.4 any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Clause 5 and for the enforcement of any judgment, order or award given under English jurisdiction.
- 5.4 Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract, or other liability, charge, or encumbrance upon any of its properties or other assets.
- 5.5 Each Party agrees with each other Party that the provisions of this Clause 5 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- 5.6 [Where the Contractor's place of business is not in England or Wales the Contractor irrevocably appoints [●] as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction arising out of or relating to the Contract or any issue connected therewith.]

6. Precedence

- 6.1 If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
- (a) Clauses 1 – 76 shall be given equal precedence with Schedule 1 (Definitions of Contract);
 - (b) Schedule 2 (Technical Requirements) and Schedule 3 (Non-Technical Requirements);
 - (c) the remaining Schedules; and
 - (d) any other documents expressly referred to in the Contract.
- 6.2 If a conflict is not resolved by the order of precedence in Clause 6.1, the provisions of this Contract shall have equal precedence.
- 6.3 If either Party identifies a conflict between two or more provisions of this Contract, then:
- (a) the Party identifying the conflict shall notify the other Party as soon as reasonably practicable after identifying such conflict with a view to minimising the possibility of time and/or costs being incurred which prove to be wasted time and/or costs as a result of the conflict; and
 - (b) where those provisions have equal precedence pursuant to Clause 6.1 or 6.2, the Authority shall resolve the conflict in its absolute discretion but having had regard to any representations made by the Contractor.

7. Authority Representatives

- 7.1 Any reference to the Authority in respect of:
- (a) the giving of consent;
 - (b) the delivering of any Notices; or
 - (c) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,
- shall be deemed to be references to the Authority's Representatives in accordance with this Clause 7.
- 7.2 The Authority's Representatives detailed in Schedule 18 (Representatives) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

- 7.3 In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 18 (Representatives) in accordance with Clause 53 (Formal Amendments to the Contract).

8. Severability

- 8.1 If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
- (a) 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 the Contract but without invalidating any of the remaining provisions of the Contract; and
 - (b) the parties shall use 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.

9. Waiver

- 9.1 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.
- 9.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

10. Transfer

- 10.1 Neither party to the Contract shall give, bargain, sell, assign, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, without the prior consent in writing of the other party.
- 10.2 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Clause 10.1 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 under any Contract Clause concerning the late payment of debts).
- 10.3 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under Clause 10.2 above shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of set-off under Paragraph 6 of Schedule 5 (Pricing and Payment);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both Clause 10.4 and sub-Clause 10.5(b) below.
- 10.4 If the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Clause 10.2 above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 10.5 The Contractor shall ensure that the Assignee:
- (a) is made aware of the Authority's continuing rights under sub-Clauses 10.3(a) and 10.3(b); and
 - (b) 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 sub-Clauses 10.3(a) and 10.3(b) above.
- 10.6 The provisions of the Contract, including any Clauses concerning payment, shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

11. Rights of Third Parties

- 11.1 Except as provided in Clause 11.2 and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to this Contract to enforce any term of this Contract in his own right and the Parties to this Contract agree that they have no intention to grant any such right.
- 11.2 Where, and only where, this Contract expressly states that a third party shall be entitled to enforce a term of this Contract (a "**Third Party Term**"):

- (a) the said third party shall be entitled to enforce the Third Party Term in its own right;
- (b) 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 11 (Rights of Third Parties)) relevant to the exercise of that right;
- (c) the third party's rights shall be subject to:
 - (i) any provision in this Contract that resolves any Dispute in accordance with the Dispute Resolution Procedure; and
 - (ii) Clause 5 (Governing Law and Jurisdiction); and
- (d) the consent of the third party shall not be required for any variation (including any release or compromise in whole or in part of any liability) or termination of this Contract or any one or more parts of it.

12. Transparency

- 12.1 Subject to Clause 12.2 but notwithstanding Clause 13 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- 12.2 Before publishing the Transparency Information to the general public in accordance with Clause 12.1, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 11 (Contractor's Commercially Sensitive Information).
- 12.3 The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with Clause 12.2. The Contractor acknowledges and accepts that their representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- 12.4 For the avoidance of doubt, nothing in this Clause 12 shall affect the Contractor's rights at law.

13. Disclosure of Information

- 13.1 Subject to Clauses 13.4 to 13.9 and Clause 12 (Transparency) each Party:
 - (a) shall treat in confidence all Information it receives from the other;
 - (b) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - (c) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- 13.2 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
 - (a) is disclosed to the Contractor Personnel, only to the extent necessary for the performance of the Contract; and
 - (b) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any Sub-Contract.
- 13.3 The Contractor shall ensure that the Contractor Personnel are aware of the Contractor's arrangements for discharging the obligations at Clauses 13.1 and 13.2 before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- 13.4 A Party shall not be in breach of Clauses 13.1, 13.2, 13.6, 13.7 and 13.8 to the extent that either Party:

- (a) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
- (b) has the right to use or disclose the Information in accordance with other Clauses of the Contract; or
- (c) can show:
 - (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
 - (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
 - (iii) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
 - (iv) from its records that the same Information was derived independently of that received under or in connection with the Contract;

provided that the relationship to any other Information is not revealed.

13.5 Neither Party shall be in breach of this Clause 13 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause 13.

13.6 The Authority may disclose the Information:

- (a) to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) subject to Clause 13.7 below, on a confidential basis to a professional adviser, consultant or other person engaged by the Authority or any Central Government Body (including benchmarking organisations) for any purpose relating to or connected with the Contract;
- (e) subject to Clause 13.7 below, on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- (f) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 13.

13.7 Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 13.6.(d) or 13.6.(e) above, the Authority will endeavour to provide the Contractor with three (3) Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under Clause 13.6.(c) above, if reasonably requested by the Contractor within two (2) Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Clause.

13.8 Before sharing any Information in accordance with Clause 13.6, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

13.9 The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the “**Act**”) or the

Environmental Information Regulations 2004 (the “**Regulations**”). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that their representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

- 13.10 Nothing in this Clause shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

14. Publicity and Communications with the Media

- 14.1 The Contractor shall not, and shall ensure that any Group Undertaking, Contractor Personnel or Sub-Contractors shall not:

- (a) issue any public statement, announcement or publication; or
- (b) communicate with representatives of the press, television, radio or other media

on any matter concerning the Contract and the Skynet EC Programme unless the Authority has given its prior written consent.

- 14.2 The Parties shall work together to prepare and review any public statement, announcement or publication which is subject to the written consent of the Authority's Representative in accordance with Clause 14.1.

15. Change of Control of Contractor

- 15.1 The Contractor shall notify the Authority at the address given in Clause 15.2, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Sub-Contractors. 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.

- 15.2 Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

[REDACTED]

and emailed to: [REDACTED]

- 15.3 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 the Effective Date.

- 15.4 The Authority may terminate the Contract in accordance with Clause 66 (Termination) by giving written notice to the Contractor within six (6) months of the Authority being notified in accordance with Clause 15.1. The Authority shall act reasonably in exercising its right of termination under this Clause 15.

- 15.5 If the Authority exercises its right to terminate in accordance with Clause 15.4 the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this Clause 15.5 must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

- 15.6 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 the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Clause.

16. Contractor's Records

- 16.1 The Contractor and their Sub-Contractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on

reasonable notice. Such records shall include but not be limited to Project Records and the Financial Records.

- 16.2 The Contractor and their Sub-Contractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
- (a) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
 - (b) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 16.3 With regard to the records made available to the Authority under Clause 16.1, and subject to the provisions of Clause 13 (Disclosure of Information), the Contractor shall permit records to be examined and if necessary copied, by the Authority, or a representative of the Authority, as the Authority may require.
- 16.4 The Contractor shall provide such assistance and facilities as the Authority and/or its representatives may require at any time on reasonable notice to obtain access to, examine and copy any of the records that the Contractor is required to maintain in accordance with Clause 16.1.
- 16.5 On request by the Authority, the Contractor shall provide such assistance and explanation as the Authority and/or its representatives may require to understand or interpret the information contained in the Project Records and Financial Records. This may include allowing the Authority or its representatives to engage directly with the relevant Employee(s) of the Contractor.
- 16.6 Unless the Contract specifies otherwise, the records referred to in this Clause shall be retained at all times during the term of the Contract and for a period of at least six (6) years from:
- (a) the Expiry Date;
 - (b) the termination of the Contract; or
 - (c) the final payment,
- whichever occurs latest.

17. Notices

- 17.1 Subject to Clause 17.6, all notices, orders, or other forms of communication required to be given in writing ("**Notices**") under or in connection with this Contract shall:
- (a) be given in writing;
 - (b) be authenticated by signature or by such other method as agreed between the Parties;
 - (c) be marked for the attention of the appropriate department or officer; and
 - (d) be marked in a prominent position with the relevant contract number as stated on the front page of this Contract.
- 17.2 Notices should be delivered by:
- (a) hand; or
 - (b) first-class prepaid post (or airmail, in the case of Notices to or from overseas); or
 - (c) electronic mail attaching the written Notice.
- 17.3 Notices shall be deemed to have been received:
- (a) if delivered by hand, on the day of delivery if it is a Business Day and otherwise on the first (1st) Business Day immediately following the day of delivery;
 - (b) if sent by first-class prepaid post (or airmail, if appropriate), on the third (3rd) Business Day (or on the tenth (10th) Business Day, in the case of airmail) after the day of posting; or
 - (c) if sent by electronic mail;

- (i) if transmitted between 09.00 and 17:00 hours (UK time) on a Business Day 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 (UK time) on the first (1st) Business Day following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

17.4 The addresses (including electronic addresses) and any relevant addressee of each Party to which all Notices shall be sent are those set out below, or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 17 (Notices):

Address for Notice to Contractor:

Commercial Manager

[REDACTED]

Address for Notice to Authority:

Authority's Commercial Officer

[REDACTED]

- 17.5 Where either Party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.
- 17.6 Nothing in this Clause 17 (Notices) shall prevent the Parties from using electronic mail in respect of any and all day-to-day communications for which this Contract does not require notice to be given in writing.

18. No Partnership or Agency

18.1 Nothing in this Contract, and no action taken under this Contract:

- (a) creates a partnership;
- (b) creates a relationship of principal and agent between either of the Parties; or
- (c) otherwise authorises either Party to bind the other Party.

19. Survival

19.1 Save as otherwise provided in this Contract:

- (a) expiry or termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the date of such expiry or termination;
- (b) the rights and obligations of the Parties under

Clause	1	Definition and Interpretations
Clause	4	Entire Agreement
Clause	5	Governing Law
Clause	6	Precedence
Clause	8	Severability
Clause	9	Waiver
Clause	10	Transfer
Clause	11	Rights of Third Parties
Clause	12	Transparency
Clause	13	Disclosure of Information
Clause	14	Publicity and Communications with the Media
Clause	16	Contractor's Records
Clause	17	Notices
Clause	18	No Partnership or Agency
Clause	19	Survival
Clause	20	Equality

Clause	21	Child Labour, Modern Slavery and Employment Law
Clause	22	Corrupt Gifts and Payments of Commission
Clause	23	Protection of Personal Data
Clause	29	Counterfeit Materiel
Clause	30	Sub-Contracting
Clause	32	Import and Export Licences
Clause	35	Government Furnished Assets
Clause	36	Accounting For Property of The Authority
Clause	37	Contractor's Personnel at Government Establishments
Clause	38	Access to Skynet Sites
Clause	43	Intellectual Property Rights
Clause	46	Payment
Clause	47	Value Added Tax
Clause	49	Tax Compliance
Clause	50	Other Taxes
Clause	56	Monitoring and Audit
Clause	60	Safety and Environment
Clause	61	Security Measures
Clause	63	Cyber
Clause	65	Dispute Resolution
Clause	66	Termination
Clause	68	Consequences of Termination
Clause	71	Indemnities
Clause	72	Limitation of Liability
Clause	73	Insurance

shall continue notwithstanding expiry or termination of this Contract; and

- (c) expiry or termination of this Contract shall not affect any other provision of this Contract which is expressed or intended to survive termination or which is required to give effect to such termination or the consequences of such termination.

20. Equality

- 20.1 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 20.2 Without prejudice to the generality of the obligation in Clause 20.1 above, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.
- 20.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause 20 (Equality) by any of its Contractor Personnel acting under its direction or control who are engaged in the performance of this Contract.
- 20.4 The Contractor agrees to take reasonable efforts to reflect this Clause 20 (Equality) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 20 (Equality) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

21. Child Labour, Modern Slavery and Employment Law

- 21.1 In this Clause 21 (Child Labour, Modern Slavery and Employment Law):
- (a) **"Child Labour Legislation"** means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic

law and directly applicable to this Contractor in the jurisdiction(s) in which it performs this Contract.

- (b) **“Modern Slavery Legislation”** means The Modern Slavery Act 2015 or any subordinate legislation.

21.2 The Contractor shall comply in all material respects with Child Labour Legislation, Modern Slavery Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed.

21.3 The Contractor agrees to take reasonable efforts to reflect this Clause 21 (Child Labour, Modern Slavery and Employment Law) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 21 (Child Labour and Employment Laws) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

22. Corrupt Gifts and Payments of Commission

22.1 The Contractor shall not do, and warrants that in entering this Contract it has not done, any of the following:

- (a) offer, promise or give to any HM Government servant any gift or financial or other advantage of any kind as an inducement or reward;
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the HM Government; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the HM Government; or
- (b) enter into this or any other contract with the HM Government in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority,

(individually and together the **“Prohibited Acts”**).

22.2 If the Contractor, their employees, agents or any Sub-Contractor (or anyone acting on their behalf or any of their employees) does any of the Prohibited Acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the HM Government, the Authority shall be entitled:

- (a) to terminate this Contract for Contractor Default pursuant to Clause 66 (Termination);
- (b) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
- (c) to recover from the Contractor any other Losses sustained in consequence of any breach of this Clause 22 (Corrupt Gifts and Payments of Commission), where this Contract has not been terminated.

22.3 In exercising its rights or remedies under this Clause 22 (Corrupt Gifts and Payments of Commission), the Authority shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act or committing of any offence under the Bribery Act 2010; and
- (b) 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 or committing of any offence under the Bribery Act 2010 is that of a Sub-Contractor or anyone acting on its or their behalf; and
 - (ii) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the Prohibited Act or committing of any offence under the Bribery Act 2010 is that of such employee.

- 22.4 Recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause 22 (Corrupt Gifts and Payments of Commission).
- 22.5 The Contractor shall notify the Authority in writing as soon as it becomes aware of the occurrence of any Prohibited Act or offence under the Bribery Act 2010.

23. Protection of Personal Data

- 23.1 The Parties shall comply with DEFCON 532B Edition Protection of Personal Data (Where Personal Data is Being Processed on Behalf of the Authority).

24. Cooperation on Expiry of Contract

- 24.1 Upon the expiry of the Contract the Contractor agrees to cooperate with the Authority to such extent as they may be reasonably required to do so for a period of up to six (6) months from the date of expiry, such period to be determined by the Authority, to ensure an orderly and efficient transition from the management by the Contractor to management by the Authority or some other person.
- 24.2 The Authority and the Contractor shall agree a fair and reasonable price for satisfying the provisions of this Clause.

Part 2 Supply of Contractor Deliverables

25. Contractor Obligations

- 25.1 The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with Schedule 2 (Technical Requirements), Schedule 3 (Non-Technical Requirements) and all other provisions of this Contract and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.

Standards of performance

- 25.2 The Contractor shall at all times perform its obligations under this Contract:
- (a) in accordance with all applicable Law and Guidance;
 - (b) in accordance with the Standards;
 - (c) in accordance with Good Industry Practice; and
 - (d) with Suitably Qualified and Experienced Personnel.

Necessary Consents

- 25.3 Subject to Clause 32 (Import and Export Licences), Clause 35 (Government Furnished Assets) and Clause 43 (Intellectual Property Rights), the Contractor shall obtain and maintain all Necessary Consents required for the performance of its obligations under this Contract.

Changes to Standards

- 25.4 The Contractor shall monitor changes in the Standards following the Effective Date until the Final Design Review and shall notify the Authority in writing of:
- (a) any changes to such Standards (other than those Standards issued by the Authority) of which it becomes aware; and
 - (b) any additional standards that the Contractor reasonably considers ought to apply.
- 25.5 If, following a notification pursuant to Clause 25.4, the Authority requires the Contractor to comply with any changes to the Standards or additional standards, any such requirement shall be dealt with in accordance with the Change Procedure.

Resourcing

- 25.6 Subject only to Clause 35 (Government Furnished Assets), the Contractor shall provide at its own expense all personnel, tools, equipment, facilities and other resources necessary for the full performance by the Contractor of its obligations under this Contract.

Quality

- 25.7 The Contractor shall:

- (a) comply with any applicable quality management and assurance requirements specified in Schedule 3 (Non-Technical Requirements) in providing the Contractor Deliverables; and
- (b) discharge their obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

25.8 Notwithstanding that the Quality Plans will have been seen and agreed by the Authority, the Contractor shall be solely responsible for the accuracy, suitability and applicability of the Quality Plans.

Project Controls Information

25.9 The Contractor shall deliver the Project Controls Information to the Authority in accordance with Schedule 6 (Governance).

26. Certificate of Conformity

26.1 Where required in Schedule 3 (Non-Technical Requirements) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with the Quality Plan. One copy of the CofC shall be sent to the Authority's Representative upon Delivery, and one copy shall be provided with the Contractor Deliverables upon Delivery.

26.2 Each CofC should include the wording "Certificate of Conformity" in the title of the document to allow for easy identification. One CofC is to be used per NSN/part number; a CofC must not cover multiple line items.

26.3 The Contractor shall consider the CofC to be a record in accordance with Clause 16 (Contractor's Records).

26.4 The Information provided on the CofC shall include:

- (a) Contractor's name and address;
- (b) Contractor unique CofC number;
- (c) Contract number and where applicable Contract amendment number;
- (d) details of any approved concessions;
- (e) acquirer name and organisation;
- (f) Delivery address;
- (g) description of Contractor Deliverable, including part number, specification and configuration status;
- (h) NATO Stock Number (NSN) (where allocated);
- (i) identification marks, batch and serial numbers;
- (j) quantities;
- (k) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.
- (l) exceptions or additions to the above are to be documented.

26.5 Where Schedule 2 (Technical Requirements) and any applicable Quality Plan require 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 26.4. The Contractor shall ensure that this Information is available to the Authority through the supply chain upon request in accordance with Clause 16 (Contractor Records).

27. Access to Contractor's Premises

27.1 The Contractor shall provide to the representatives of the Authority following reasonable notice in writing (minimum 10 Business Days in advance), relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to their premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract. The Authority and any of its representatives or party under its control shall comply with the security arrangements of the Contractor for any access to the Contractor's premises as required under this Contract.

27.2 As far as reasonably practical, the Contractor shall ensure that the provisions of Clause 27.1 are included in their Sub-Contracts with those Sub-Contractors identified in Schedule 15 (Approved Sub-

Contractors). The Authority, through the Contractor, shall arrange access to such Sub-Contractors premises.

28. Delivery

28.1 Where the Contractor Deliverables (excluding Deliverable Documents) are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall:

- (a) contact the Authority's Representative in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information requested by the Authority pertinent to Delivery;
- (b) comply with any special instructions for arranging Delivery as advised by the Authority;
- (c) ensure that each consignment of the Contractor Deliverables is accompanied by all appropriate paperwork including but not limited to a Certificate of Conformity in accordance with Clause 26 (Certificate of Conformity) and a DEFFORM129J;
- (d) be responsible for all costs of Delivery; and
- (e) deliver the Contractor Deliverables to the Authority or their representatives at the location to be agreed with the Authority on or before the Delivery Date and between the hours agreed by the Parties.

28.2 Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority in accordance with Clause 51 (Risk in Deliverables) and Clause 52 (Vesting).

29. Counterfeit Materiel

29.1 For the purposes of this Clause 29, "**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:

- (a) misleading marking of the materiel, labelling or packaging;
- (b) misleading documentation; or
- (c) 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.

29.2 Where the Authority suspects that any Article or consignment of Articles contains Counterfeit Materiel, it shall:

- (a) notify the Contractor of its suspicion and reasons therefor;
- (b) where reasonably possible, and if requested by the Contractor within ten (10) Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the 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;
- (c) give the Contractor a further twenty (20) Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at 29.2(b)(i) or the provision of a sample at 29.2.b(ii), to comment on whether the Article or consignment meets the definition of Counterfeit Materiel; and
- (d) 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 in accordance with Clause 40 (Acceptance of Contractor Deliverables).

29.3 In addition to its rights under Clause 40, where the Authority reasonably believes that any Article or consignment of Articles contains Counterfeit Materiel, it shall be entitled to:

- (a) retain any Counterfeit Materiel; and/or

- (b) 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 in accordance with Clause 40.
- 29.4 Where the Authority intends to exercise its rights under Clause 29.3 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 the Authority, for:
- (a) the separation of Counterfeit Materiel from any Article or part of an Article; and/or
 - (b) the removal of any Article or part of an Article that the Authority is satisfied does not contain Counterfeit Materiel.
- 29.5 In respect of any Article, consignment or part thereof that is retained in accordance with Clause 29.3, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under Clause 29.4 but the Contractor fails to do so within the period specified by the Authority and subject to Clause 29.9, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:
- (a) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
 - (b) to pass it to a relevant investigatory or regulatory authority;
 - (c) 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
 - (d) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor. Exercise of the rights granted at Clause 29.5(a), 29.5(b) and 29.5(c) shall not constitute acceptance in accordance with Clause 40.
- 29.6 Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under Clause 29.5. If the value of the scrap or other disposal payment exceeds the amount due to the Authority under Clause 29.5 then the balance shall accrue to the Contractor.
- 29.7 The Authority shall not use a retained Article or consignment other than as permitted in this Clause 29.
- 29.8 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.
- 29.9 Where the Contractor has objected in writing to the notification of the rejection by the Authority, the Authority shall not exercise its rights at Clause 29.5 of this Clause 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 29.5.
- 29.10 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 except where it has been determined by the Contract dispute resolution procedure that the Authority has made an incorrect determination under Clause 29.2(d). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with Clause 29.2.

30. Sub-Contracting

- 30.1 The Contractor shall be directly responsible for the management and supervision of its Sub-Contractors. The sub-contracting of any part of this Contract shall not relieve the Contractor of any of the Contractor's obligations or liabilities under this Contract.
- 30.2 The Contractor shall be responsible to the Authority for acts and omissions of any Sub-Contractor in relation to such Sub-Contractor's performance in connection with this Contract, and any act or omission of that Sub-Contractor in relation to such Sub-Contractor's performance in connection with this Contract shall be regarded for the purposes of this Contract as an act or omission by the Contractor.

Addition of Sub-Contractors

- 30.3 Without prejudice to Clauses 30.1 and 30.2, the Contractor shall not enter into a new Sub-Contract without first informing the Authority in writing of its intention to do so at least ten (10) Business Days prior to entry into the relevant Sub-Contract and in accordance with the provisions of Clause 30.5.

Subject to Clauses 30.4 and 30.8, the Authority shall have the right to veto the appointment of any proposed new Sub-Contractor.

- 30.4 For the purposes of Clause 30.7, the Authority shall not veto the Contractor entering into Sub-Contracts with the Sub-Contractors specified in Schedule 15 (Sub-Contractors) in relation to the performance of its obligations arising from or in connection with this Contract (the "**Approved Sub-Contractors**").
- 30.5 The Contractor shall not replace any Approved Sub-Contractor in Schedule 15 (Sub-Contractors) without first informing the Authority in writing of its intention to do so except where the replacement Sub-Contractor is already an Approved Sub-Contractor detailed in Schedule 15 (Sub-Contractors). The Contractor shall notify the Authority of any decision to replace a Sub-Contractor with another Sub-Contractor in Schedule 15 (Sub-Contractors) at least ten (10) Business Days prior to entry into the relevant Sub-Contract and in accordance with the provisions of Clause 30.5.
- 30.6 If the Contractor proposes to enter into a Sub-Contract, or to replace a Sub-Contractor, with a proposed new Sub-Contractor which is not an Approved Sub-Contractor, it shall as soon as reasonably practicable provide the Authority with such information as the Authority reasonably requires to enable the Authority to decide whether to veto the appointment of the proposed new Sub-Contractor, including in relation to the proposed new Sub-Contractor:
- (a) its name and registered address;
 - (b) a copy of the proposed sub-contract, including details of the value of the proposed sub-contract;
 - (c) details of the method by which the proposed sub-contract will be procured;
 - (d) the purposes for which the proposed Sub-Contractor will be employed, including the scope of any services to be provided by the proposed Sub-Contractor;
 - (e) if relevant, confirmation that the sub-contract requires the proposed Sub-Contractor to comply with any relevant service levels;
 - (f) where the proposed Sub-Contractor is also a Group Sub-Contractor, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed sub-contract has been agreed on "arms-length" terms; and
 - (g) any further information reasonably requested by the Authority in relation to the proposed Sub-Contractor (including the proposed Sub-Contractor's long term credit ratings and information demonstrating that the proposed Sub-Contractor is reliable and able to comply with any relevant obligations applying to the Contractor under this Agreement).
- 30.7 Subject to Clause 30.9, the Authority shall notify the Contractor whether or not it will veto the Sub-Contractor within ten (10) Business Days after receipt of the information set out in Clause 30.5.
- 30.8 For the purposes of Clause 30.6, the Authority shall be entitled to veto the appointment of a proposed new Sub-Contractor on any of the following grounds:
- (a) acting in the UK national interest, the Authority considers it inappropriate for the proposed new Sub-Contractor to participate;
 - (b) the Authority has concerns about the suitability of the proposed new Sub-Contractor following receipt of information (details of which it shall reveal to the Contractor unless prevented by confidentiality or other legal requirements) from a regulatory body or the Serious Fraud Office or the Crown Prosecution Service (or any equivalent body);
 - (c) the Authority has concerns that UK national security may be compromised if the proposed new Sub-Contractor is engaged by the Contractor;
 - (d) the Authority reasonably believes that the resources available to the proposed new Sub-Contractor are insufficient for it to fulfil the obligations which would be placed upon it under the relevant Sub-Contract; or
 - (e) the Contractor has failed to provide all the information required by Clause 30.5 or the Authority has reasonable concerns about the quality or reliability of any information provided,
- (the "**Permitted Grounds**").
- 30.9 The Authority shall be entitled to request the removal of a Sub-Contractor at any time. If the Authority notifies the Contractor of such requirement, the Contractor shall promptly terminate any Sub-Contract(s) it has with that Sub-Contractor and Clauses 30.3 to 30.8 shall apply in respect of any

proposed replacement Sub-Contractor. The consequences of the removal of a Sub-Contractor in accordance with this sub-Clause 30.9 shall be managed in accordance with Schedule 7 (Contract Change Procedure) unless such removal is due to the Sub-Contractor causing the Contractor to be in breach of any obligation under this Contract in relation to security or national security, in which case the Contractor shall not be entitled to any relief or financial compensation in respect of the consequences of such removal. The Contractor shall take all reasonable measures to mitigate the consequences of the removal of a Sub-Contractor.

Sub-Contractor Management Plan

30.10 Following delivery of the Sub-Contractor Management Plan in accordance with Schedule 12 (Contract Document Requirements List) and Acceptance of the Sub-Contractor Management Plan, the Contractor shall manage its Sub-Contractors in accordance with the Sub-Contractor Management Plan.

Supply Chain Security

30.11 The Contractor shall have in place supply chain security management systems that are at least equivalent to ISO 28000:2022 (Specification for security management systems for the supply chain).

Flowdown of obligations to Key Sub-Contractors

30.12 The Contractor shall ensure that the provisions of this Contract are reflected in all Key Sub-Contracts, to the extent necessary to enable the Contractor fully to meet its obligations to the Authority under this Contract.

30.13 The Contractor shall in any Key Sub-Contracts ensure that it has the right to terminate such Key Sub-Contract by giving the relevant Key Sub-Contractor no more than thirty (30) days' notice in writing (unless otherwise agreed by the Parties in writing). The Contractor shall use reasonable endeavours to obtain Key Sub-Contract terms that enable the Contractor to terminate any Key Sub-Contract at the minimum possible cost to the Contractor and/or the Authority.

Prompt Payment

30.14 Where the Contractor enters into a Sub-Contract, the Contractor shall ensure that appropriate terms are included in such Sub-Contract:

- (a) providing that where the Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
- (b) providing that the Contractor shall pay the Sub-Contractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
- (c) providing that where the Contractor fails to comply with Clause 30.13 (a) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of Clause 30.13 (b) after a reasonable time has passed; and
- (d) requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards, provisions having the same effect as Clauses 30.13 (a) to 30.13 (d).

31. Supply Of Information for NATO Codification and Defence Inventory Introduction

31.1 The purpose of Codification is to catalogue Items of Supply, using the minimum information required to distinguish them from similar items available. The cataloguing information is not normally a full technical specification and definition that could be used for manufacture of alternative items.

31.2 In the case of an Item of Supply for which the Contractor is the Design Control Authority (DCA), the Contractor shall:

- (a) provide Technical Data to the Codification Authority, or the Authority's Agent specified by the Codification Authority, where:
 - (i) the Item of Supply is not already codified in the NATO Codification System (NCS); or
 - (ii) the Contractor has not previously supplied that information either in the recommended spare parts list supplied by the Contractor in the initial provisioning phase or under another contract;
- (b) where the Item of Supply has already been Codified, supply the NATO Stock Number(s) (NSN(s)) to the Codification Authority, or the Authority's Agent; and

- (c) inform the Codification Authority, or the Authority's Agent, when and to whom the data was supplied if the information has previously been supplied by the Contractor.

- 31.3 In the case of an Item of Supply for which the Contractor is not the DCA, the Contractor shall ensure that the Catalogue Technical Data is supplied, either by the Sub-Contract DCA or by the Contractor. The Contractor shall, where appropriate, consider including the terms of this Clause 31 (Supply of Information for NATO Codification or Defence Inventory Introduction), or equivalent text, in any Sub-Contract(s), to ensure delivery of the cataloguing information.
- 31.4 The cost of supplying the information under Clauses 31.2 and 31.3 above, and any other information specifically called for under this Contract, shall be deemed to have been included in the Contract Price.
- 31.5 The Contractor may from time to time be requested to supply additional information necessary for Codification. To the extent that it has the right to do so, the Contractor shall supply that additional data. The extent of additional information shall be governed by the requirements of the Codification system at that time. Full details of the Codification system can be obtained from the Codification Authority.
- (a) At any time during the life of this Contract the Contractor shall notify the Codification Authority of all modifications or design changes made to an Item of Supply, which affect the Item Identification, including reference number changes, Form, Fit or Function.
 - (b) Fair and reasonable payment, based upon the actual work involved, will be made to the Contractor for the supply of additional information under Clause 31.5 above and, in respect of modifications and design changes approved by the Authority, the supply of updated information under Clause 31.5(a) above.
- 31.6 Subject to the restrictions resulting from Clause 31.8, the Authority shall have the right, free of charge, to use and copy or have used and copied for Codification Purposes information supplied under the provisions of this Clause 31 (Supply of Information for NATO Codification or Defence Inventory Introduction), use and copying being limited to that necessary for Codification Purposes. The Authority may convert or have converted any Catalogue Technical Data provided in whatever format to an alternative format, including digital formats.
- 31.7 Subject to the restrictions resulting from Clause 31.8, the information constituting the Item Identification may be included in the databases of codification data which are produced by the Authority or any international organisation of which the Authority is a member and may be made available to other governments, contractors, organisations or individuals who are authorised to have access to those databases by the Authority or the organisation(s) of which the Authority is a member.
- 31.8 The Contractor shall endeavour to ensure that all information supplied under this Clause 31 (Supply of Information for NATO Codification or Defence Inventory Introduction) can be used for Codification Purposes. However, where any of the information supplied is marked to indicate it is proprietary in nature the Contractor shall indicate the restrictions which apply to its use.
- 31.9 The Codification Authority shall not retain or use the Catalogue Technical Data supplied under this Clause 31 (Supply of Information for NATO Codification or Defence Inventory Introduction) for any purpose other than for Codification.
- 31.10 If the DCA is located in a NATO country other than the UK, the equivalent organisation in that NATO country shall be substituted for the UKNCB. All contact between the Contractor and those equivalent organisations will be via the UKNCB.
- 31.11 If the DCA is located in a country which is not a member of the NATO Alliance or a NATO sponsored (NCS participating) country, the Codification Authority will be deemed to be the UKNCB, which may nominate an agent to act on its behalf.
- 31.12 The Contractor, Sub-Contractor or supplier may contact the Codification Authority for any information concerning the NCS.
- 31.13 The requirements set out in Annex B to Schedule 20 (Pro Forma Documents) shall apply in relation to Item Identification.

32. Import and Export Licences

UK Import and Export Licences

- 32.1 If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence

is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation, and other reasonable assistance in obtaining any necessary UK import or export licence. The Contractor shall include on such licence any service provider notified to the Contractor by the Authority, including but not limited to the Skynet Services Contractor.

Obtaining a licence or authorisation from a foreign government – Contractor obligations

- 32.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
- (a) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Clause shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
 - (i) the end user as: His Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "**HM Government**"); and
 - (ii) the end use as: For the Purposes of HM Government; and
 - (b) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom"; and
 - (c) ensure the licence or authorisation includes such rights of use, disclosure or transfer as may be necessary to enable the Skynet Services Contractor to operate and maintain the Contractor Deliverables on behalf of the Authority.
- 32.3 If the Contractor or any Sub-Contractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Sub-Contractor. For the purposes of this Clause "materiel" shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
- 32.4 Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Risk, Assumptions, Issues, Dependencies and Opportunity Register and in Risk, Assumptions, Issues, Dependencies and Opportunity Management Plan, with appropriate review points.
- 32.5 During the term of the Contract and for a period of up to two (2) years from expiry or termination of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstances to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
- (a) the Contractor shall, or procure that the Contractor's Sub-Contractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) Business Days to resolve the issue and should they fail, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
 - (b) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

- 32.6 Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- 32.7 Where the Authority invokes Clause 32.5 or 32.6 the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
- 32.8 Where the Contractor Sub-Contracts work under the Contract, which is likely to be subject to foreign export control, import control, or both, the Contractor shall use reasonable endeavours to incorporate in each Sub-Contract equivalent obligations to those set out in this Clause. Where it is not possible to include equivalent terms to those set out in this Clause, the Contractor shall report that fact and the circumstances to the Authority.

Authority obligations

- 32.9 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign government in respect of the performance of the Contract.
- 32.10 The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

Contractor obligation to provide information

- 32.11 The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
- (a) a non-UK export licence, authorisation or exemption; or
 - (b) any other related transfer or export control,
- that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Section 5 (Third Party Intellectual Property – Rights and Restrictions) of Schedule 10 (Intellectual Property Rights).
- 32.12 If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 32.11(a) or 32.11(b) they shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable.
- 32.13 If the information to be provided under Clause 32.12 has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 32.12.
- 32.14 During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clauses 32.12 or 32.13 of which they become or are aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 32.15 For a period of up to two (2) years from expiry or termination of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clauses 32.12 or 32.13 of which they become aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 32.16 Where following receipt of materiel from a Sub-Contractor or any of their other suppliers, restrictions are notified to the Contractor by that Sub-Contractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within twenty (20) Business Days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within twenty (20) Business Days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.

- 32.17 If the restrictions referred to in Clause 32.16 prevent the Contractor from performing their obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the Contract in accordance with Clause 53 (Formal Amendments to Contract) or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in Clause 32.18 termination in these circumstances shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. Except as set out in Clause 32.18, in the event of termination in these circumstances termination shall be pursuant to Clause 66.3 (Termination for Force Majeure) (notwithstanding that the circumstances described in this Clause 32.17 do not constitute a Force Majeure Event and that the provisions of Clause 75 (Force Majeure) do not apply to such circumstances).
- 32.18 If the restrictions notified to the Authority pursuant to Clause 32.12 were known or ought reasonably have been known by the Contractor (but were not disclosed) at the Effective Date or if restrictions notified to the Authority pursuant to Clauses 32.14 or 32.16 were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 32.12, termination under Clause 32.17 will be in accordance with Clause 67 (Contractor Default) and the provisions of Clause 32.22 will not apply.

Authority obligation to provide information

- 32.19 The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 32.11, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
- 32.20 If the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or if additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. If the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
- 32.21 Where:
- (a) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clauses 32.19 or 32.20 or both; or
 - (b) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform their obligations under the Contract, the matter shall be handled under the terms of Clause 53 (Formal Amendments to the Contract) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. In the event of termination in these circumstances termination shall be pursuant to Clause 66.3 (Termination for Force Majeure) (notwithstanding that the circumstances described in this Clause 32.21 do not constitute a Force Majeure Event and that the provisions of Clause 75 (Force Majeure) do not apply to such circumstances).

Interim Position

- 32.22 Pending agreement of any amendment of the Contract as set out in Clause 32.17 or 32.21, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from their obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

33. Special Jigs, Tooling and Test Equipment

- 33.1 The Contractor shall provide all jigs, tools, patterns moulds, dies, manufacturing gauges, and test equipment, together with any associated fixtures, fittings, and software necessary for the manufacture of the Articles or for the performance of any other work in accordance with the Contract Schedule of Requirements, unless supplied by the Authority under the terms of Clause 35 (Government Furnished Assets).
- 33.2 For the purposes of this Clause, "Special Jigs, Tools Etc" means all special jigs, tools, patterns, moulds, dies, manufacturing gauges, and test equipment, together with any associated fixtures, fittings, and software necessary for the manufacture of the Articles or for the performance of any other work, which are not tools of the trade, as used by the Contractor in the performance of the Contract.

Pricing

- 33.3 The Contract Price shall include an appropriate amount to enable the Contractor to recover their expenditure on Special Jigs, Tools Etc including the cost of maintenance and calibration under Clause 33.11. The Contractor shall not include any charges where these are available under other contracts they already hold from the Authority, either under the terms of this Clause or as GFA under Clause 35 (Government Furnished Assets). This Clause shall not apply to the refurbishment of any Special Jigs, Tools Etc already held as GFA.
- 33.4 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 cost of any Special Jigs, Tools Etc.

Passing of Property

- 33.5 Except where otherwise specified in the Contract the Special Jigs, Tools Etc shall become the property of the Authority:
- (a) in accordance with Clause 52 (Vesting) as if they were Articles;
 - (b) 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 the Contract, upon delivery of the first article so produced for the third party;
 - (c) in all other cases upon acceptance of the first Article, as defined within the Contract, or upon Contract completion, whichever is the earlier.
- 33.6 Where property in the Special Jigs, Tools Etc passes to the Authority under Clauses 33.5(b) or 33.5(c) and they are still required to complete the Contract they shall be transferred to the Public Store Account as Contract Support Items and treated thereafter as GFA under the terms of Clause 35 (Government Furnished Assets).

Acceptance

- 33.7 Acceptance shall occur at the time the first Article produced with the Special Jigs, Tools Etc is accepted in accordance with Clause 40 at the time stated in the Contract.

Modifications

- 33.8 Notwithstanding the passing of property to the Authority under Clause 33.5 and their transfer to the Public Store Account under Clause 33.6, the Contractor shall be free to modify the Special Jigs, Tools Etc as they consider necessary to produce the Articles or to perform the Contract work, and the Authority's approval of those modifications shall not be required.

Accounting and Control

- 33.9 The Contractor shall account for and control the Special Jigs, Tools Etc in accordance with the provisions of Clause 33.6. Pending the transfer to the Public Store Account, the Contractor shall:
- (a) maintain a list of Special Jigs, Tools Etc procured or manufactured by the Contractor;
 - (b) make the list available to the Authority for inspection by the Authority's Asset Accounting Centre;
 - (c) maintain the list for three (3) years, or for such other period as is specified in the Contract, after any disposal of the Special Jigs, Tools Etc where not transferred to the Public Store Account in accordance with Clause 35.
 - (d) forward the list to the Authority's Commercial Officer following first Article acceptance and prior to transfer of Special Jigs, Tools Etc to the Public Store Account; The Contractor shall remove

from the list any Special Jigs, Tools Etc transferred to the Public Store Account under Clause 33.6.

- 33.10 The Contractor shall be responsible for safe custody, maintenance and calibration necessary to retain the Special Jigs, Tools Etc in good order, until transferred to the Public Store Account, delivered or disposed of in accordance with written disposal instructions given by the Authority.

Availability

- 33.11 Once property in the Special Jigs, Tools Etc has passed to the Authority in accordance with Clauses 33.5(b) or 33.5(c), the Contractor shall, if required, deliver the Special Jigs, Tools Etc to an individual, company, factory, or Government Establishment 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.
- 33.12 This Clause shall not entitle the Authority to require the Contractor to dispose of the Special Jigs, Tools Etc to the prejudice of the Contract or other contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for that use in connection with a contract with another customer has been given in accordance with Clause 33.16 below.
- 33.13 Where the Contractor holds no contracts for articles or services for which the Special Jigs, Tools Etc will be used, but having received the Authority's approval in accordance with Clause 33.16 below, has made a firm written offer to a third party to supply those articles or perform those services, the Authority shall not be entitled to dispose of the Special Jigs, Tools Etc until the Contractor's offer has expired and no commitment to supply those articles or perform those services remains.

Disposal

- 33.14 As soon as the Special Jigs, Tools Etc cease to be required by the Contractor to meet the Authority's requirements or for use as specified in Clause 33.12 they shall notify the Authority. The Authority will instruct the Contractor as to their disposal and, where appropriate, the method of crediting the Authority with the proceeds of them less any cost of disposal incurred by the Contractor. The Authority's disposal instructions shall be given within three (3) months, or other period stated in the Contract, from receipt of the Contractor's notification.
- 33.15 Should the Authority fail to issue disposal instructions within this period, a fair and reasonable amount will be agreed for storage and, as instructed by the Authority, maintenance and calibration of the Special Jigs, Tools Etc, this sum to be a direct charge against the Contract or allocated as an indirect charge in accordance with the Contractor's approved Questionnaire on the Method and Allocation of Costs.

Use for other than the purposes of the Authority

- 33.16 The Contractor shall not use the Special Jigs, Tools Etc for any 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 that 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 the Contractor shall require that the written approval be obtained direct from the Authority by the Sub-Contractor.

34. Redundant Materiel

- 34.1 "**Redundant Materiel**" shall mean Materiel that is identified as surplus to the requirement of the Contract for whatever reason.
- 34.2 All Redundant Materiel resulting from work carried out under, or procured for the purposes of the Contract, the costs of which have been paid by the Authority under the Contract, or which is otherwise owned by the Authority, shall be disposed of as follows:
- (a) On completion of the Contract or earlier if appropriate, the Contractor shall prepare:
 - (i) a list of those items of the Materiel referred to above 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
 - (ii) 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.
 - (b) The Contractor shall send the lists referred to in Clause 34.2(a)(i) and 34.2(a)(ii) above to the Authority's Commercial Officer.

- (c) Within three (3) months of the date of receipt of the lists, the Authority shall issue disposal instructions to the Contractor. Such disposal instructions shall require that the items of materiel are either:
 - (i) transferred to other subsisting contracts; or
 - (ii) subject to contract, retained by the Contractor for use in the performance of future contracts placed with the Contractor; or
 - (iii) subject to contract, repaired by the Contractor; or
 - (iv) at the direction of the Authority, sold by the Contractor, acting on behalf of the Authority, for the best price reasonably obtainable. Materiel designated in accordance with Clause 34.2(a)(ii) above shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

- 34.3 The proceeds of the sale of items of Materiel sold pursuant to Clause 34.2(c)(iv) above shall be credited to the Authority in accordance with arrangements made between the Contractor and the Authority.
- 34.4 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.

Part 3 Authority Obligations

35. Government Furnished Assets

- 35.1 The Authority shall, on or before the dates specified in Schedule 8 (Authority Responsibilities), provide the following types of Government Furnished Assets (GFA) to the Contractor as necessary for the performance of this Contract:
- (a) the Government Furnished Equipment (GFE); and
 - (b) the Government Furnished Information (GFI).
- 35.2 The GFA shall be provided by the Authority at the quantities, for the durations, for the purposes and at the locations set out in Schedule 8 (Authority Responsibilities). A failure by the Authority to provide GFA in accordance with this Clause 35.2 shall be managed in accordance with Clause 39 (Authority Responsibilities).
- 35.3 Schedule 8 (Authority Responsibilities) is an exhaustive list of all GFA required by the Contractor to perform its obligations under this Contract. Except to the extent expressly stated in this Contract, the Authority shall have no other obligations to provide any equipment, facilities, information, services or other assets to the Contractor in connection with the Contract.

General

- 35.4 All Government Furnished Assets (GFA) shall remain the property of the Authority. It shall be used in the execution of the Contract and except with the prior consent in writing of the Authority, the Contractor shall not use any GFA for any purpose other than the applicable purpose set out in Schedule 8 (Authority Responsibilities).
- 35.5 Neither the Contractor, nor any Sub-Contractor, nor any other person, shall have a lien on GFA, 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 any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any GFA on behalf of the Contractor.

Receipt

- 35.6 Subject to Clauses 35.7 and 35.8 below, within fourteen (14) days of receipt of GFE or GFI, or such other longer period as may be specified in the Contract, the Contractor shall for
- (a) GFE:
 - (i) check the GFE to verify that it corresponds with the GFE specified in the Contract;
 - (ii) conduct a reasonable visual inspection; and

- (iii) conduct any additional inspection and testing as may be necessary and practicable to check that the GFE is not defective or deficient for the purpose for which it has been provided,
- (b) GFI:
 - (i) check the GFI to verify that it corresponds with the GFI specified in the Contract;
 - (ii) conduct a reasonable visual inspection; and
 - (iii) confirm that the GFI provides the information requested.

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

- 35.7 Where a Government Furnished Equipment is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 35.6 above shall count from the date on which packages are opened.
- 35.8 The Authority shall within a reasonable time after receipt of any notice under Clause 35.6 replace, re-issue or authorise repair of GFE agreed to be defective or deficient. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient GFE.
- 35.9 If the Authority fails to provide, replace, or authorise repair of defective or deficient GFE within a reasonable time of receipt of a notice in accordance with Clause 35.5, fair and reasonable revisions of the Contract Price, delivery schedule or both shall be made as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.
- 35.10 Clauses 35.6 to 35.9 do not apply in the following circumstances:
 - (a) where GFE is issued for the purpose of repair, overhaul, conversion or other work to be performed on the GFE, inspection of such property shall be as specified in the Contract;
 - (b) where the Contractor can show that the GFE cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in the Contract;
 - (c) where Special Jigs and Tools etc. become GFE under Clause 33 (Special Jigs, Tooling And Test Equipment).

Custody

- 35.11 Subject to Clause 35.14 below and any limitation or exclusion of liability as may be specified in the Contract, the Contractor shall be responsible for the safe custody and due return of GFA, whether or not incorporated into the Articles, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions or until the expiry of the period specified in Clause 35.17.
- 35.12 The Contractor shall be responsible for such calibration and maintenance of the GFA during the period that the GFA is in its or any Sub-Contractor's possession in accordance with any instructions described in the Contract. To the extent that no such instructions have been provided the Contractor shall carry out such calibration and maintenance as may be reasonably necessary to ensure that the Government Furnished Equipment is kept in a serviceable condition for the purpose for which it has been provided.
- 35.13 If requested, the Authority, within a reasonable time, and where practicable before delivery of the GFA, shall notify the Contractor of the value of the GFA.
- 35.14 The Contractor shall not be liable in respect of:
 - (a) defects or deficiencies notified to the Authority in accordance with Clause 35.6 or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 35.6;
 - (b) fair wear and tear in GFA resulting from its normal and proper use in the execution of the Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
 - (c) GFA rendered unserviceable as a direct result of ordinary performance of the Contract;
 - (d) any loss or damage to GFA 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 subsonic 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;
- (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the King's enemies.

Accounting and Return of Government Furnished Assets

- 35.15 The Contractor shall open and maintain a Public Store Account (PSA) in accordance with Clause 36 (Accounting for Property of the Authority).
- 35.16 Once title in Special Jigs, Tools etc has passed to the Authority in accordance with Clause 33.6 the Contractor shall record that equipment in the PSA in accordance with DEFSTAN 05-099.
- 35.17 At the Expiry Date or Termination Date, the Contractor shall forward a list of GFA still held to the Authority's Commercial Officer. Return or disposal of such GFA will be as specified in the Contract, or as instructed by the Authority at the Expiry Date or Termination Date. If no disposal instructions are specified in the Contract the Authority shall provide such instructions within two (2) months of the Contractor's written request to do so.
- 35.18 Provided that any Government Furnished Information complies with any requirements specified in paragraph 2 (Government Furnished Information) of Schedule 8 (Authority Responsibilities), the Authority gives no warranty or representation as to the completeness, accuracy, quality or fitness for purpose of any Government Furnished Information provided under this Contract.

36. Accounting For Property of The Authority

- 36.1 The Contractor shall:
- (a) maintain a Public Store Account ("**PSA**"), in accordance with DEFSTAN 05-099, which shall include a complete list of all property of the Authority, as defined in Clause 36.2, and record for that property all transactions or other accounting information specified at Annex A of Schedule 20 (Pro Forma Documents);
 - (b) 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 DEFSTAN 05-099. The other three 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;
 - (c) ensure that the PSA, and all property of the Authority recorded in the PSA, is available for inspection by the Authority at any reasonable time;
 - (d) on being given two (2) months' notice, co-operate with the Authority to conduct audits of the PSA in a manner to be determined by the Authority, and where the Authority has reasonable grounds to doubt the integrity of the PSA to the extent that the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
 - (e) retain the PSA for a period of three (3) years after disposal of the last item of the property of the Authority;
 - (f) if the Authority agrees that a Sub-Contractor shall have responsibility in the PSA for Government Furnished Equipment issued under this Contract, the Contractor shall include in any Sub-Contract with the relevant Sub-Contractor provisions corresponding to those set out in in this Clause 36 (Accounting for Property of the Authority) which shall apply to such Government Furnished Equipment issued to the Sub-Contractor in order for the Sub-Contractor to fulfil its obligations under its Sub-Contract; and
 - (g) manage the Government Furnished Equipment component of the PSA in accordance with the provisions of DEFSTAN 05-099 and implement any new edition of or amendment to DEFSTAN 05-099 within three (3) months of the publication date of the new edition. These amendments shall not have retrospective effect.
- 36.2 For the purposes of this Clause 36 (Accounting for Property of the Authority), 'property of the Authority' means Government Furnished Equipment issued under Clause 35 (Government Furnished Assets) but does not include other property vested in the Authority under Clause 52 (Vesting).

- 36.3 The obligations of the Contractor arising under this Clause 36 (Accounting for Property of the Authority) in respect of Government Furnished Equipment issued to the Contractor under this Contract shall survive the termination or expiry of this Contract until all such obligations are fulfilled including the provisions of Clause 36.1(e).
- 36.4 The Authority reserves the right to amend Annex A of Schedule 20 (Pro Forma Documents) without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. If the Authority exercises this right:
- (a) the Contractor shall (subject to Clause 36.4(b)) implement the amendment to Annex A of Schedule 20 (Pro Forma Documents) 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 in writing between the Authority and Contractor) is given to the Contractor. These amendments shall not have retrospective effect; and
 - (b) 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 of Schedule 20 (Pro Forma Documents).

37. Contractor's Personnel at Government Establishments

General

- 37.1 The following general provisions apply:
- (a) The Officer in Charge shall provide such available administrative and technical facilities for the Contractor Personnel employed at Government Establishments for the purpose of this Contract as may be necessary for the effective and economical discharge of work under this Contract. These facilities will be provided free of charge. The status to be accorded to the Contractor Personnel for messing purposes will be at the discretion of the Officer in Charge.
 - (b) Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with this Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing this Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of this Contract or as otherwise directed by the Authority.
 - (c) For the purposes of this Clause 15.1, the Contractor shall have no claim against the Authority for any additional cost or delay caused by the closure for holidays of Government Establishments.

Liability In Respect of Damage To Government Property

- 37.2 Subject to Clause 35 (Government Furnished Assets), Clause 38 (Access to Skynet Sites) and Clause 51 (Risk in Deliverables), the Contractor shall, make good or, at the option of the Authority, pay compensation for all damage occurring to any property owned by the Government, which includes land or buildings, caused by the Contractor or by any Contractor Personnel, arising from its or their presence on a Government Establishment in connection with this Contract, provided that this Clause 37.2 shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its reasonable control.
- 37.3 The total liability of the Contractor under Clause 37.2 shall be subject to Clause 72 (Limitations on Liability).

Contractor's Property

- 37.4 All property of the Contractor and the Contractor Personnel shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- (a) where any such loss or damage was caused or contributed to by any act, neglect or default of any of the Authority's employees, agents or contractors then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and/or
 - (b) where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

Contractor Personnel

- 37.5 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those Contractor Personnel who may need to enter a Government Establishment for the purpose of, or in connection with, work under this Contract, giving such particulars as the Authority may require, including full details of birthplace and parentage of any such Contractor Personnel who:
- (a) was not born in the United Kingdom; or
 - (b) if he or she was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.
- 37.6 The Authority shall issue passes for those Contractor Personnel who are approved by it in accordance with Clause 37.5 for admission to a Government Establishment and a member of Contractor Personnel shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.
- 37.7 Notwithstanding the provisions of Clauses 37.5 and 37.6 if, in the opinion of the Authority, any Contractor Personnel shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.
- 37.8 The decision of the Authority upon any matter arising under Clauses 37.5 to 37.7 inclusive shall be final and conclusive.

Observance of Regulations

- 37.9 The following provisions apply:
- (a) The Contractor shall ensure that the Contractor Personnel have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard (the "**Personnel Security Standard**")) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment;
 - (b) Where the Contractor requires information on the Personnel Security Standard or security clearance for the Contractor Personnel or is not in possession of the relevant rules, regulations or requires guidance on them, it shall apply in the first instance to the Authority's Project Manager;
 - (c) On request, the Contractor shall be able to demonstrate to the Authority that the Contractor's processes to assure compliance with the Personnel Security Standard have been carried out satisfactorily. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Personnel Security Standard;
 - (d) The Contractor shall comply and shall ensure that the Contractor Personnel comply with the rules, regulations and requirements that are in force whilst at that Government Establishment which shall be provided by the Authority on request; and
 - (e) When on board ship, compliance with the rules, regulations, and requirements shall be in accordance with the Ship's Regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements shall be provided on request by the Officer in Charge.

Transport Overseas

- 37.10 Where the Contractor Personnel are required by this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Contractor shall make such arrangements through the Authority's Project Manager. When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes the Contractor Personnel to accompany materiel for installation which the Contractor is to arrange to be delivered, the Contractor shall make its own transport arrangements. The Authority shall reimburse the Contractor's additional costs for such transport of the Contractor Personnel on presentation of evidence supporting the use of alternative transport and of the costs involved, provided that in the case of rail, air or sea travel the Authority shall reimburse only the costs of standard or economy class travel. Transport of the Contractor Personnel locally overseas which is necessary for the purposes of this Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

Medical Treatment Overseas

- 37.11 Out-patient medical treatment given to the Contractor Personnel by a Service Medical Officer or other Government Medical Officer at a Government Establishment overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Government Establishment, and transportation of the Contractor Personnel back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Contractor at the appropriate local rate.

Injuries, Disease and Dangerous Occurrences

- 37.12 The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 ("RIDDOR") to the Officer in Charge of the relevant Government Establishment. This is in addition to any report that the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

Dependants of Contractor Personnel

- 37.13 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor Personnel. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Authority rates.

Provision of Funds Overseas

- 37.14 The Contractor shall, wherever possible, arrange for funds to be provided to the Contractor Personnel overseas through normal banking channels. If banking or other suitable facilities are not available, the Authority shall, upon request by the Contractor and subject to any reasonable limitation required by the Contractor, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Government Establishment to which the Contractor Personnel are attached. All such advances made by the Authority shall be recovered from the Contractor.

Health and Safety Hazard Control

- 37.15 Where the Contractor enters a Government Establishment for the purpose of performing work under this Contract:
- (a) the Contractor shall notify the Authority's Project Manager or Officer in Charge or the site project liaison officer of:
 - (i) any health and safety hazards associated with the work to be performed by him or any of the Contractor Personnel;
 - (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
 - (iii) any precautions to be taken by the Contractor as well as any precautions which, in the Contractor's opinion, ought to be taken by the Authority, to control such risks;
 - (b) the Authority shall notify the Contractor of:
 - (i) any health and safety hazards which may be encountered by the Contractor or any of the Contractor Personnel on the Government Establishment;
 - (ii) any foreseeable risks to the health and safety of the Contractor or any of the Contractor Personnel, associated with such hazards; and
 - (iii) any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, to control such risks;
 - (c) the Contractor shall notify the Contractor Personnel of and, where appropriate, provide adequate instruction in relation to:
 - (i) the hazards, risks and precautions notified by the Contractor to the Authority under sub-Clause 37.15(a);
 - (ii) the hazards, risks and precautions notified by the Authority to the Contractor under sub-Clause 37.15(b); and

- (iii) the precautions which, in the Contractor's opinion, ought to be taken by the Contractor Personnel to control those risks;
- (d) the Contractor shall provide the Authority's Project Manager or Officer in Charge or the site project liaison officer with:
 - (i) copies of those sections of the Contractor's own and, where appropriate, the Contractor's Personnel safety policies which are relevant to the risks notified under sub-Clause 37.15(a);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by the Contractor to the Contractor Personnel under sub-Clause 37.15(c); and
- (e) the Authority shall provide the Contractor with:
 - (i) copies of those sections of the Authority's own safety policies which are relevant to the risks notified under sub-Clause 37.15(b);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by the Authority to its employees similar to those called for from the Contractor under sub-Clause 37.15(c).

38. Access to Skynet Sites

Provision of access

- 38.1 With effect from the Effective Date, the Authority shall provide or procure the provision of access to the Skynet Sites for the Contractor Personnel to the extent necessary for the Contractor to support the Skynet Services Contractor at the Skynet Sites for the integration of FPM-A with the Skynet System in accordance with Schedule 2 (Technical Requirements) and Schedule 3 (Non-Technical Requirements), subject to and in accordance with this Clause 38 (Access to Skynet Sites).

Arrangement of access

- 38.2 Attendance by the Contractor Personnel at any Skynet Site shall be arranged in advance and the dates for attendance agreed with the Authority (or, if requested by the Authority, agreed directly with the Skynet Services Contractor). On each occasion of attendance, the Contractor shall notify the Authority (or, if requested by the Authority, notify the Skynet Services Contractor directly) of the following details of the Contractor Personnel attending the relevant Skynet Site:

- (a) personal data (name, date and place of birth);
- (b) security clearance;
- (c) purpose, date(s) and duration of visit; and
- (d) confirmation that each individual holds the appropriate safety certificates, work permits or other approvals to undertake the work that they intend to perform (if applicable).

The Contractor shall provide such information and other reasonable co-operation and assistance as the Authority or the Skynet Services Contractor may require to arrange access to the Skynet Sites (including, where necessary, the sharing of technical or project information relating to the work to be performed at the relevant Skynet Site(s) (subject to Clause 13 (Disclosure of Information)) and making available the relevant Contractor Personnel to arrange the terms of such access).

Performance of work

- 38.3 Unless otherwise agreed by the Authority (or, if requested by the Authority, agreed directly by the Skynet Services Contractor), the Contractor Personnel shall perform all work at the Skynet Sites in connection with this Contract during Normal Working Hours.
- 38.4 The Contractor shall ensure that all work performed by the Contractor Personnel at the Skynet Sites in connection with this Contract is performed in a manner that:
- (a) complies with all relevant operating processes and procedures (as amended from time to time) in place in respect of the Skynet System and/or the Skynet Sites;
 - (b) does not cause or require any change to the design or configuration of the Skynet System that has not been approved in advance by the Authority;

- (c) does not cause any loss or damage to, or adversely affect the operation, functioning, reliability or life of, the existing Skynet Ground Segment; and
- (d) except to the extent agreed by the Authority in writing in advance, does not cause any disruption to the delivery of services by the Skynet Services Contractor.

38.5 Without prejudice to Clause 38.2, where requested by the Authority the Contractor shall conduct, or shall assist and support the Skynet Services Contractor to conduct, such inspection or testing of the Skynet Ground Segment as may be necessary to demonstrate to the Authority's reasonable satisfaction that the Contractor has complied with Clause 38.4(c).

Engagement with the Skynet Services Contractor

38.6 Without prejudice to Clause 38.2 and any other obligation set out in this Contract, where the Contractor is required to perform project work at a Skynet Site or any work that otherwise requires the Contractor to engage with the Skynet Services Contractor, the Contractor shall:

- (a) act in an open and collaborative manner with the Skynet Services Contractor (including, subject to Clause 13 (Disclosure of Information), sharing any technical or project information relating to that work that the Skynet Services Contractor may reasonably require);
- (b) keep the Skynet Services Contractor regularly and fully informed as to the progress of that work and any impact or potential impact of that work on the delivery of services by the Skynet Services Contractor or operation of the Skynet Sites;
- (c) permit Suitably Qualified and Experienced Personnel of the Skynet Services Contractor to attend and observe the performance of any work undertaken at a Skynet Site;
- (d) take all reasonable steps to minimise any disruption to the delivery of services by the Skynet Services Contractor or operation of the Skynet Sites caused by the performance of that work,
- (e) take all reasonable steps to accommodate any operational requirements or priorities notified to the Contractor by the Skynet Services Contractor (or any changes to those requirements or priorities);
- (f) attend, participate in and otherwise support any meetings arranged by the Authority or the Skynet Services Contractor in relation to that work; and
- (g) act in accordance with any reasonable instructions of the Authority in relation to that work.

Loss or damage to Authority property

38.7 Subject to Clause 35 (Government Furnished Assets) and Clause 51 (Risk in Deliverables), the Contractor shall indemnify the Authority for any Losses incurred as a result of damage to any part of the Skynet Ground Segment or any other Authority property caused by the Contractor or any Contractor Personnel whilst at a Skynet Site in connection with this Contract, provided that at the Authority's option the Contractor shall repair or replace such damaged property.

39. Authority Responsibilities

39.1 The Parties acknowledge and agree that the Contractor's performance of its obligations under this Contract may depend on the Authority's performance of Authority Responsibilities in Schedule 8 (Authority Responsibilities). The Contractor shall not be considered to be in breach of its obligations under this Contract (including the Contractor's obligations to ensure that each Milestone is achieved by the relevant Milestone Date and to ensure that the Services meet obligations in Schedule 2 (Technical Requirements) and Schedule 3 (Non-Technical Requirements) to the extent that the Contractor's failure to perform its obligations is as a direct result of a clear failure or delay by the Authority to fulfil an Authority Responsibility in accordance with this Contract, provided that:

- (a) the Contractor notifies the Authority as soon as practicable, and in any event within five (5) Business Days, upon becoming aware that any Authority Responsibility has not or will not be performed or that the Authority Responsibility performance will be delayed (as applicable);
- (b) the notification referred to in Clause 39.1(a) includes details of the relevant Authority Responsibility, together with evidence of the Authority Responsibility's adverse effect on the Contractor's ability to perform the Contractor's obligations and the action the Contractor proposes to take to mitigate the effect of the non-performance or delay in the performance of the Authority Responsibility, including the non-exhaustive mitigating steps described in Schedule 8 (Authority Responsibilities); and

- (c) the Contractor uses, and continues to use, reasonable endeavours in accordance with Good Industry Practice to mitigate the effects of, and make good, the non-performance or delay in the performance of the Authority Responsibility and to facilitate the Contractor's continued performance of this Agreement.

- 39.2 Any obligations of the Authority not specified in Schedule 8 (Authority Responsibilities), but specified elsewhere in this Agreement shall not be Authority Responsibilities. There shall be no obligation on the Authority to provide any advice or assistance to the Contractor, except as set out in Schedule 8 (Authority Responsibilities) and the sole remedy for failing to comply with any Authority Responsibility shall be that set out in this Clause 39.
- 39.3 The Contractor shall not propose any new Authority Responsibility or any amendments to any existing Authority Responsibility, except through the Contract Change Procedure.
- 39.4 If the Authority fails to fulfil an Authority Responsibility, the Contractor shall be entitled to a Change in accordance with Schedule 7 (Contract Change Procedure) and the Authority shall not unreasonably withhold consent to such Change.

Part 4 Acceptance

40. Acceptance of Contractor Deliverables (excluding Deliverable Documents)

- 40.1 Acceptance of all Contractor Deliverables shall be in accordance with Clauses 40.2 to 40.6 below.
- 40.2 Acceptance of Contractor Deliverables (excluding Deliverable Documents) shall, unless rejected by notice in writing by the Authority, occur thirty (30) Business Days after each of the Contractor Deliverables have been Delivered to the place as agreed between the Authority and the Contractor in a condition conforming in all material respects to the provisions of the Contract.
- 40.3 Subject to Clause 40.6, the Contractor shall at their own expense and within ten (10) Business Days of the Authority's notice of rejection, remove any Contractor Deliverable, Article or consignment which the Authority has rejected.
- 40.4 If the Contractor fails to remove the rejected Contractor Deliverables, Article or consignment in accordance with Clause 40.3, the Authority may return it to the Contractor at the Contractor's risk and expense.
- 40.5 The Contractor shall at their own expense and within the contractual period for delivery, or within such further reasonable period as the Authority may allow, supply Contractor Deliverables that conform with the requirements of the Contract.
- 40.6 The Contractor may object in writing to a notification of rejection by the Authority within the period specified at Clause 40.3. If the objection is not resolved within a reasonable time, it shall be treated as a dispute in accordance with Clause 65. Unless otherwise agreed the Contractor shall not remove the Contractor Deliverables which are the subject of the rejection notice unless and until the objection or dispute has been resolved in favour of the Authority.

41. Acceptance of Deliverable Documents

- 41.1 Acceptance of Deliverable Documents shall be in accordance with Clauses 41.2 to 41.9 below.

Categorisation and Delivery of Deliverable Documents

- 41.2 Each Deliverable Document will be categorised by the Authority. The categorisation for each Deliverable Document is set out in the column headed "Acceptance Category" in Schedule 12 (Contract Document Requirements List). Following delivery of each Deliverable Document to the Authority:
 - (a) if the Deliverable Document is a Category A Deliverable Document, the Deliverable Document shall be reviewed in accordance with Clauses 41.5 to 41.6 below;
 - (b) if the Deliverable Document is a Category B Deliverable Document, the Deliverable Document shall be reviewed in accordance with Clause 41.7 below.
- 41.3 Unless otherwise agreed by the Parties, all Deliverable Documents shall be provided in electronic format, be in the English Language and shall be delivered via the Shared Data Environment.
- 41.4 The Contractor shall advise the Authority's Project Manager via email when a Deliverable Document has been placed on the Shared Data Environment. Review timescales listed below shall commence on the Authority's acknowledgment of receipt.

Acceptance of Category A Deliverable Documents

- 41.5 Within twenty (20) Business Days (or such other period as agreed between the Parties) of receipt in accordance with Clause 41.4 above of each Category A Deliverable Document, the Authority's Representative shall review the Category A Deliverable Document and shall notify the Contractor's Project Manager in writing that the Category A Deliverable Document either:
- (a) meets the requirements as detailed in Schedule 12 (Contract Documents Requirements List) and the Authority (acting reasonably) is satisfied with the Category A Deliverable Document and that the Category A Deliverable Document is therefore Accepted; or
 - (b) does not meet the Product Description requirements and the Authority (acting reasonably) is not satisfied with the Category A Deliverable Document and that the Category A Deliverable Document is therefore rejected, together with details of any deficiencies and/or omissions.
- 41.6 Where the Authority's Representative gives notice pursuant to Clause 41.5(b) that a Category A Deliverable Document is rejected, the Contractor shall either:
- (a) within ten (10) Business Days after receipt of such notice (or such other period as agreed between the Parties), rectify the deficiencies and/or omissions notified by the Authority's Representative and redeliver the Category A Deliverable Document and Clause 41.5 above shall apply to such redelivered Category A Deliverable Document, or
 - (b) escalate the matter to the Monthly Management Board (MMB) in accordance with Schedule 6 (Governance).

Acceptance of Category B Deliverable Documents

- 41.7 Acceptance of each Category B Deliverable Document delivered to the Authority's Project Manager in accordance with the Schedule 12 (Contract Document Requirements List) shall take effect on receipt of the Deliverable Document by the Authority in accordance with Clause 41.4.

Amendments to Accepted Deliverable Documents

- 41.8 The Contractor shall not make any amendments to any Deliverable Documents that have been Accepted. If at any time after a Deliverable Document has been Accepted an amendment to that Deliverable Document is necessary on the basis that the content of the Deliverable Document is no longer valid or correct:
- (a) the Acceptance of the Deliverable Document shall be withdrawn;
 - (b) the Contractor shall promptly make any necessary amendments to the Deliverable Document; and
 - (c) the amended Deliverable Document (which shall have the same categorisation as the previously Accepted Deliverable Document) shall be subject to the Acceptance process set out in this Clause 41.

42. Not Used**Part 5 Intellectual Property****43. Intellectual Property Rights**

- 43.1 The provisions of Schedule 10 (Intellectual Property Rights) shall apply.

Part 6 Price and Payment**44. Contract Price**

- 44.1 Subject to Clause 45 (Changes to the Contract Price), Clause 46 (Payment) and Clause 68 (Consequences of Termination), the Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price.
- 44.2 Except to the extent expressly stated in this Contract, the Contractor shall not be entitled to claim from the Authority, and the Authority shall have no obligation to pay, any other costs or charges incurred by the Contractor in performing its obligations under this Contract in addition to the Contract Price.

45. Changes to the Contract Price

- 45.1 No amendments or adjustments shall be made to the Contract Price except by way of a Contract Price Change agreed in accordance with Schedule 7 (Contract Change Procedure) or the Authority exercising a Contract Option in accordance with Clause 48.2.

46. Payment

- 46.1 Schedule 5 (Pricing and Payment) sets out the payment arrangements in respect of the Contract Price and any other amount that is payable by the Authority under this Contract.

47. Value Added Tax

- 47.1 The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.
- 47.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under this Contract according to the law at the relevant tax point.
- 47.3 The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Commercial Officer) in cases of doubt. The Contractor shall notify the Authority's Commercial Officer of the Authority's VAT liability under this Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- 47.4 Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
- 47.5 Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) days of a written request for payment of any such sum by the Contractor.
- 47.6 In relation to the Contractor Deliverables supplied under this Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved under the Dispute Resolution Procedure.
- 47.7 Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 47.3 above, the Authority will pay the VAT assessed by HMRC. If HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

48. Exercising a Contract Option

- 48.1 The Authority reserves the right to amend this Contract by including any of the Contract Options set out in Annex C of Schedule 5 at any time, by issuing a notice to the Contractor in accordance with Clause 48.2 and recording the change in accordance with the Change Procedure.
- 48.2 A notice exercising the right to include a Contract Option within the scope of this Contract shall:
- (a) state which Contract Option the Authority is exercising;
 - (b) specify the date on which the notice is issued; and
 - (c) be given in accordance with Clause 17 (Notices) of the Contract.
- 48.3 Any notice purporting to exercise a Contract Option shall be of no effect unless it is issued in accordance with Clauses 48.1 and 48.2.
- 48.4 If the Authority exercises a Contract Option in accordance with Clause 48.2, the Contract Price shall be adjusted in accordance with the agreed price for the Contract Option as listed in Annex C of Schedule 5, and indexation shall apply, as appropriate, in accordance with Paragraph 7 of Schedule 5.

49. Tax Compliance**Warranty**

- 49.1 The Contractor represents and warrants that as at the Effective Date 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.

Duty of the Contractor to notify OOTNC

- 49.2 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within twenty (20) Business Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (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.
- 49.3 For the avoidance of doubt, the obligation at Clause 49.2 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.

Contractor Default

- 49.4 The Authority shall be entitled to terminate this Contract pursuant to Clause 68 (Consequences of Termination) if:
- (a) the warranty given by the Contractor pursuant to Clause 49.1 is materially untrue;
 - (b) the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 49.2; or
 - (c) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.

Duties of the Authority

- 49.5 In exercising its rights or remedies under this Clause 49 (Tax Compliance), the Authority shall:
- (a) 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; or

- (b) without prejudice to Clause 49 (Tax Compliance), seriously consider, where appropriate, action other than termination of the Contract to deal with the failure by the Contractor to comply with this Clause 49 (Tax Compliance).

50. Other Taxes

Customs Duty Drawback

- 50.1 The Contract Price shall be inclusive of any UK Customs and Excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any portion of the Contractor Deliverables supplied which may be for shipment overseas.

Plastic Packaging Tax (PPT)

- 50.2 The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
- 50.3 The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
- 50.4 On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT the Contractor has paid that relates to the Contract.
- 50.5 The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
- 50.6 In accordance with Clause 16 (Contractors Records) the Contractor (and their Sub-Contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
- 50.7 Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
 - (a) confirmation of the tax status of any Plastic Packaging Component;
 - (b) documents to confirm that PPT has been properly accounted for;
 - (c) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
 - (d) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
- 50.8 The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with Clause 50.7 above is accurate.
- 50.9 In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
- 50.10 The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

51. Risk in Deliverables

- 51.1 Risk in the Contractor Deliverables shall only pass from the Contractor to the Authority on Acceptance of the Contractor Deliverable in accordance with Clause 40 and as such the risk of loss of or damage to the Contractor Deliverables remains with the Contractor until Acceptance. Without prejudice to any other rights or remedies of the Authority, the Contractor shall at its own expense make good any such loss or damage however caused or occasioned to the Contractor Deliverables which occurs before Acceptance (save to the extent that such loss or damage is caused by the Authority).

52. Vesting

- 52.1 Subject to the following provisions of this Clause 52:

- (a) each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and
- (b) all materiel which the Contractor acquires or allocates for incorporation in any of the Articles, shall vest in and become the absolute property of the Authority, as from the time the construction of the Article begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the Contractor for the sole purpose of completing the Articles and delivering them when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose.

- 52.2 Neither the Contractor, nor a Sub-Contractor, nor any other person shall have a lien on any Article or materiel which have vested in the Authority under Clause 52.1 for any sum due to the Contractor, Sub-Contractor or other person. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Clause 52 are brought to the notice of all Sub-Contractors and other persons dealing with any such Articles or materiel.
- 52.3 Without prejudice to Clause 52.1, the Contractor shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any materiel is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Contractor shall comply with any direction given by the Authority in this respect.
- 52.4 Any Article or materiel which is rejected by the Authority shall immediately re-vest in the Contractor.
- 52.5 If the Authority terminates the Contract otherwise than under Clause 66.4 any Article which has not been accepted in accordance with Clause 40 any materiel which has not been incorporated in any Article which has been accepted in accordance with Clause 40 shall re-vest in the Contractor. Such re-vesting shall occur on the expiry of thirty days from the date on which that termination shall take effect, unless the Authority has given the Contractor notice, prior to that expiry, that the Authority elects to retain the property in the Article or materiel.
- 52.6 Any payment made by the Authority in respect of any Article or materiel which re-vest in the Contractor under Clauses 52.4 or 52.5 shall be recoverable from the Contractor.
- 52.7 The Contractor shall hand over to the Authority any Article or materiel in which the Authority has elected to retain the property under Clause 52.5. If the Contractor fails to do so, the Authority shall have the right to enter the Contractor's premises and remove the Article or materiel and recover the cost of doing so from the Contractor.
- 52.8 The Authority shall pay a fair and reasonable price for any Article or materiel in which it has elected to retain the property under Clause 52.5 and which are handed over to it by the Contractor or otherwise come into its possession.
- 52.9 Where any Article or materiel in the Authority's possession or control has re-vested in the Contractor in accordance with Clauses 52.4 or 52.5, the Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the 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 days of their re-vesting.

Part 7 Change

53. Formal Amendments to the Contract

- 53.1 The Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf) in accordance with the Change Procedure. Such written agreement shall consist of:
- (a) the Authority's Offer of Amendment set out either in a serially numbered amendment letter issued by the Authority to the Contractor or, where applicable in accordance with Paragraph 11 of Schedule 7, in an urgent operational repair tasking; and
 - (b) the Contractor's unqualified acceptance of the contractual amendments as evidenced by DEFFORM 10B duly signed by the Contractor.
- 53.2 Not Used.

54. Contract Change Procedure

- 54.1 All changes relating to the Contract shall be dealt with in accordance with the Schedule 7 (Contract Change Procedure).

Part 8 Contract Management**55. Governance**

- 55.1 The provisions of Schedule 6 (Governance) shall apply.

56. Monitoring and Audit**Monitoring and audit**

- 56.1 Without prejudice to any other specific audit rights set out in this Contract, the Authority shall be entitled to monitor the Contractor's progress and performance of this Contract and to conduct periodic audits and inspections of any element(s) of the Contractor's work, premises, records, systems or procedures relating to this Contract in such detail and frequency as it reasonably requires to:
- (a) verify conformance of any element(s) of an FPM-A with the Schedule 2 (Technical Requirements) or the Standards;
 - (b) verify conformance of an FPM-A with the Schedule 3 (Non-Technical Requirements); and/or
 - (c) otherwise satisfy itself of the Contractor's compliance with its obligations under this Contract.
- 56.2 The Authority shall provide no less than ten (10) Business Days' notice prior to exercising its rights under Clause 56.1 (save in the case of emergency circumstances or circumstances concerning health, safety and/or security when no notice shall be required). When the Authority wishes to exercise its rights under Clause 56.1, the Contractor shall:
- (a) provide to the Authority and/or its representatives such access to premises, Project Records, Financial Records and Contractor Personnel;
 - (b) make available to the Authority and/or its representatives such accommodation, equipment and facilities; and
 - (c) provide such other co-operation and assistance,
- as the Authority and/or its representatives may reasonably require to exercise those rights.

Rectification action

- 56.3 The Contractor shall as soon as reasonably practicable (or in accordance with such timescale as may be agreed by the Authority) rectify any failure(s) or defect(s) identified by the exercise of the Authority's rights under Clause 56.1 and notified to the Contractor, to the extent that they constitute a non-compliance with the requirements of this Contract.

Authority costs

- 56.4 If the exercise of the Authority's rights under Clause 56.1 identifies any failure(s) or defect(s) that constitute a non-compliance with the requirements of this Contract then the Contractor shall be responsible for the costs incurred by the Authority in conducting the audit or inspection that identified the failure(s) or defects(s) and any subsequent audit or inspection carried out by the Authority to satisfy itself that the necessary rectification action has been carried out in accordance with Clause 56.3.

Sub-Contractors

- 56.5 The Contractor shall ensure that the provisions of this Clause 56 (Monitoring and Audit) are incorporated into all Sub-Contracts at any level so that the Authority may undertake audits and inspections of those elements of works that are being undertaken by each Sub-Contractor.

No relief

- 56.6 The exercise of the Authority's rights under Clause 56.1 (including any failure by the Authority or its representatives to identify any failure(s) or defect(s)) shall not in any way:
- (a) affect the Contractor's obligations or liabilities under this Contract; or
 - (b) constitute acceptance of any Contractor Deliverables under this Contract.

57. Not Used**58. SME Spend Data Collection**

- 58.1 The Contractor shall by 30 June (or such alternative date agreed between the parties (acting reasonably) in writing having regard for the end date of the Contractor's financial year)) each year during the Contract Period at (subject to the operation of Clause 58.4) no additional cost, charge and expense to the Authority provide to the Authority the information identified in DEFFORM 139 (as amended by the Authority from time to time and with each such amended version taking effect in accordance with Clause 58.3), including:
- (a) the total Revenue on and prior to the Reporting Date in respect of the relevant financial year immediately prior to the Reporting Date;
 - (b) the total value of Sub-Contract Revenue paid under the Contract in respect of the relevant financial year immediately prior to the Reporting Date; and
 - (c) the total value of Sub-Contract Revenue paid to SMEs and VCSEs in respect of the relevant financial year immediately prior to the Reporting Date.
- 58.2 The Authority may issue from time-to-time guidance to the Contractor in relation to the completion of DEFFORM 139 (and the Contractor shall not unreasonably refuse to comply with any such guidance so issued when completing such DEFFORM and complying with this Clause).
- 58.3 The Authority may at any time during the Contract Period change the reporting template in DEFFORM 139, provided that the Authority shall have given a minimum of 30 (thirty) days' advance notice in writing of the scope and nature of such change or changes. The changes may include the data required or format of the report or both. The parties agree that no such change shall constitute a formal amendment of the Contract.
- 58.4 Where the Contractor is reasonably likely to incur additional costs arising from any change to the reporting template in DEFFORM 139 notified by the Authority to the Contractor pursuant to Clause 58.3, the Contractor may notify the Authority to such effect providing at the same time a Contractor Change Proposal including the information identified in paragraph 4 of Schedule 7 (Contract Change Procedure). On and from the date on which the Authority receives such notification and proposal the parties shall operate, and comply with their respective obligations under paragraph 6 of Schedule 7 (Contract Change Procedure) in relation to such change and for the purposes of this Clause all references to "Contractor Proposal" shall be construed as references to the "Contractor Change Proposal" and "Authority Notice of Change" shall be construed as references to the Authority's notice issued pursuant to Clause 58.3.
- 58.5 Notwithstanding the requirements of Clause 16 (Contractor Records), the Contractor shall retain the information identified in Clause 58.1 and supporting records for a period of 24 (twenty-four) months commencing on the date of their provision pursuant to Clause 58.1.

Part 9 Safety, Environment and Security**59. [REDACTED]**

59.1 [REDACTED]

60. Safety and Environment**Contractor's Obligations**

- 60.1 The Contractor's obligations in respect of safety and the environment relating to the Contractor are as set out in Clause 25 and Schedule 3 (Non-Technical Requirements).

Breaches of safety and environmental Legislation

- 60.2 If the Contractor becomes aware of any prosecution or proceedings for criminal breaches of any safety or environmental Legislation related to the subject matter or the execution of this Contract, against the Contractor or any Contractor Personnel engaged in performance of this Contract, the Contractor shall immediately notify the Authority.
- 60.3 Any convictions received during the period of this Contract for criminal breaches of any safety or environmental Legislation related to the subject matter or the execution of this Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be a Contractor Default.

Environmental practice

- 60.4 The Contractor shall in all its operations to perform this Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of the Contractor and its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.
- 60.5 The Contractor is encouraged to bring to the attention of the Authority any measures which might promote sustainable procurement from a social, economic and environmental point of view.

61. Security Measures**The Official Secrets Acts**

- 61.1 The Contractor shall:
- (a) take all reasonable steps to ensure that all the Contractor Personnel engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract; and
 - (b) if directed by the Authority, ensure that any the Contractor Personnel shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

Security Measures

- 61.2 Unless it has the written authorisation of the Authority to do otherwise, neither the Contractor nor any of the Contractor Personnel shall, either before or after the completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
- (a) who is not a British citizen;
 - (b) who does not hold the appropriate authority for access to the protected matter;
 - (c) in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - (d) who is not an Employee of the Contractor; or
 - (e) who is an Employee of this Contractor and has no need to know the information for the proper performance of this Contract.
- 61.3 The Contractor shall, and shall procure that its Sub-Contractors shall, at all times carry out the Contract in accordance with the requirements of the Security Aspects Letter. Unless it has the written authorisation of the Authority to do otherwise, the Contractor and the Contractor Personnel shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure that:
- (a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and
 - (b) any Secret Matter is at all times strictly safeguarded in accordance with the Government Functional Standard (GovS) 007 (as amended from time to time) and upon request, is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause 61 (Security Measures), shall be final and conclusive.

- 61.4 The Contractor shall:
- (a) provide to the Authority:
 - (i) upon request, such records giving particulars of the Contractor Personnel who have had at any time, access to any Secret Matter that is required to be kept in accordance with Clause 61.3(b);
 - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and Contractor Personnel are complying with its obligations under this Clause 61 (Security Measures), including the measures taken or

proposed by the Contractor so as to comply with its obligations and to prevent any breach of them; and

- (iii) full particulars of any failure by the Contractor and the Contractor Personnel to comply with any obligations relating to Secret Matter arising under this Clause 61 (Security Measures) immediately upon such failure becoming apparent; and
- (b) ensure that, for the purpose of checking the Contractor's compliance with the obligation in Clause 61.3(b) a representative of the Authority shall be entitled, at any time, to enter and inspect any premises used by the Contractor, which are in any way connected with this Contract, and inspect any document or thing in any such premises which is being used, or made for the purposes of this Contract. Such representative shall be entitled to all such information as it may reasonably require.

61.5 If at any time either before or after the completion or termination of this Contract, the Contractor or any of its Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Contractor shall forthwith inform the Authority of the matter with full particulars thereof.

Sub-Contracts

61.6 If the Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:

- (a) submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;
- (b) incorporate into the Sub-Contract the terms of Part 2 of Schedule 19 (Flowdown Provisions) and such secrecy and security obligations as the Authority shall direct. For the purposes of including the provisions of Part 2 of Schedule 19 (Flowdown Provisions), "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub-Contractor"; and
- (c) inform the Authority immediately it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

Termination

61.7 In accordance with Clause 66 (Termination), the Authority shall be entitled to terminate this Contract immediately if:

- (a) the Contractor is in breach of any obligation under this Clause 61 (Security Measures); or
- (b) the Contractor is in breach of any secrecy or security obligation imposed by any other contract with HM Government,

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Contractor's breach of this Clause 61 (Security Measures).

62. Official Sensitive Security Requirements

62.1 The Contractor shall protect all Information relating to the aspects designated UK OFFICIAL-SENSITIVE as identified in Schedule 17 (Security Aspects Letter) in accordance with the official security conditions set out in the Security Aspects Letter.

62.2 The Contractor shall include the requirements and obligations set out in Clause 62.1 in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of UK OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as UK OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this Clause 62 (Official-Sensitive Security Requirements) to its Sub-Contractors and through all levels of the supply chain to the lowest level where any UK OFFICIAL-SENSITIVE Information is handled.

63. Cyber

Authority Obligations

63.1 The Authority shall:

- (a) determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk Level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and
- (b) notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

Contractor Obligations

63.2 The Contractor shall, and shall procure that its Sub-Contractors shall:

- (a) comply with DEFSTAN 05-138;
- (b) complete the Cyber Security Model (CSM) Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-Contractor, and complete a further CSM Risk Assessment or CSM Contractor Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;
- (c) carry out the CSM Contractor Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Contractor Assurance Questionnaire;
- (d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause 63 in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under Clause 63.2(a) above and this Clause 63.2(d) the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- (e) comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- (f) notify the Joint Security Coordination Centre (JSyCC) Warning Advice and Reporting Point (WARP) in accordance with Industry Security Notice (ISN) 2017/03 as amended or updated from time to time and the Contractor's National or Designated Security Authority (NSA/DSA), and in the case of a Sub-Contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, and providing further information in phases, as full details become available;
- (g) in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Level;
- (h) consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Contractor Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and / or Sub-Contractor as appropriate; and
- (i) include provisions equivalent to Clause 63.14 in all Sub-Contracts imposing provisions equivalent to this Clause 63.2 (the "equivalent provisions") and, where a Sub-Contractor breaches terms implementing this Clause 63.2 in a Sub-Contract, the Contractor shall, and shall procure that its Sub-Contractors shall, in exercising their rights or remedies under the relevant Sub-Contract:

- (i) notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority's views into consideration; and
- (ii) have regard to the equivalent provisions,

provided always that where the Contractor has notified the Authority that it or one or more of its Sub-Contractors cannot comply with Clauses 63.2(a) to 63.2(i) above the Authority and Contractor will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Contractor, the Contractor shall, and shall procure that its Sub-Contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 63.2(a) to 63.2(i) above shall apply in full. If a Cyber Security Implementation Plan cannot be agreed the provisions of the Dispute Resolution Procedure shall apply.

Management of Sub-Contractors

- 63.3 Provided that it is reasonable in all the circumstances to do so, the Authority agrees that the Contractor shall be entitled to rely upon the self-certification by a Sub-Contractor of its compliance with its obligations pursuant to Clause 63.2.
- 63.4 Where the Contractor becomes aware that a Sub-Contractor is not complying with its obligations, the Contractor shall notify the Authority and provide full details of the Sub-Contractor's non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-Contract having regard to Clause 63.2(i).
- 63.5 Having regard to the Authority's views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-Contractor in accordance with the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Clause 63 and the provisions of Clause 63.15 or 63.16 as appropriate shall apply.
- 63.6 The Contractor shall, and shall procure that its Sub-Contractors shall, include provisions equivalent to Clauses 63.2 to 63.6 in all Sub-Contracts which flow down the obligations set out in Clause 63.2 of this Contract.

Records

- 63.7 The Contractor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, in accordance with Clause 19 (Contractor Records), full and accurate records including but not limited to:
 - (a) details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Contract; and
 - (b) copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause 63, including but not limited to, all documents demonstrating compliance with Clause 63.2(e) and in relation to any notifications made under Clause 63.2(f) and/or investigation under Clause 63.2(g), any information used to inform the CSM Risk Assessment Process and to carry out the CSM Contractor Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-Contractor.
- 63.8 The Contractor shall, and shall ensure that any Sub-Contractor shall, on request provide the Authority, the Authority's representatives and/or the Contractor's NSA/DSA such access to those records as may be required in connection with this Contract.

Audit

- 63.9 Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident (in which case the Contractor agrees, and shall procure that its Sub-Contractors agree, that the Authority and its representatives, in coordination with the Contractors NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary), the Authority, its representatives and/or the Contractor's NSA/DSA may, not more than twice in any calendar year and for a period of six (6) years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:
 - (a) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
 - (b) to review the Contractor's and/or any Sub-Contractor's compliance with its obligations under this Clause 63; and/or

- (c) to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of Clauses 63.9(a) and 63.9(b) above.
- 63.10 The Authority, acting reasonably and having regard to the confidentiality and security obligations owed by the Contractor to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Contractor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the Authority any unsupervised access to any of the Contractor's information systems or electronic communications networks. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-Contractor or delay the provision of the Contractor Deliverables and Contractor information received by the Authority in connection with the audit shall be treated as confidential information.
- 63.11 The Contractor shall, and shall ensure that any Sub-Contractor shall, on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- (a) all information requested by the Authority within the permitted scope of the audit;
 - (b) reasonable access to any Contractor Sites controlled by the Contractor or any Associated Company and any Sub-Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of this Contract and, where such Contractor Sites and/or equipment are outside the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
 - (c) access to any relevant staff.
- 63.12 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) days' notice of its intention to conduct an audit.
- 63.13 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 63, unless the audit identifies a material breach of the terms of this Clause 63 by the Contractor and/or Sub-Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

Breach of Obligations

- 63.14 In exercising its rights or remedies under this Clause 63, the Authority shall:
- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Contract; and
 - (b) give all due consideration, where appropriate, to action other than termination of the Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.
- 63.15 Where the Cyber Risk Level of this Contract is assessed to be a moderate or high, and the Contractor breaches the terms of this Clause 63, the Authority shall be entitled:
- (a) to terminate the Contract (whether in whole or in part) and to claim damages in accordance with Clause 68 (Consequences of Termination) as though such breach is a material breach; and
 - (b) where the Contract has not been terminated, to recover from the Contractor any other loss sustained in consequence of any breach of this Clause 63, subject to any provision which is agreed elsewhere in this Contract.
- 63.16 Where the Cyber Risk Level of this Contract is assessed to be very low or low, and the Contractor breaches the terms of this Clause 63, the Authority shall be entitled:
- (a) to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Clause 63, subject to any provision which is agreed elsewhere in this Contract; and
 - (b) where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractors NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with Clause 68 (Consequences of Termination) as though such breach is a material breach.

- 63.17 Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause 63 (Cyber) the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with Clause 68 (Consequences of Termination) as though such breach is a material breach.

General

- 63.18 On termination or expiry of this Contract the provisions of this Clause 63 excepting 63.2(b) and 63.2(c) above shall continue in force so long as the Contractor and/or and Sub-Contractor holds any MOD Identifiable Information relating to this Contract.
- 63.19 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 63 that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 63.20
- (a) The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. If there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level provided always that the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.
 - (b) Subject to 63.20(a) above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with the Change Procedure to determine the request for adjustment or extension. The Contractor must deliver a Change Proposal to the Authority within eight (8) weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the Change Proposal is rejected. If the Contractor does not agree with the Authority's determination, then the provisions of the Dispute Resolution Procedure shall apply.
- 63.21 The Contractor shall not recover any costs and/or other losses under or in connection with this Clause 63 where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

64. Supply of Data for Hazardous Materials or Substances in Contractor Deliverables

- 64.1 The Contractor shall provide to the Authority:
- (a) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the Classification, Labelling and Packaging (CLP) Regulation 1272/2008; and
 - (b) for each hazardous Article, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.
- Nothing in this Clause 64 (Supply of Data for Hazardous Articles, Materials and Substances) shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- 64.2 If the Item of Supply contains or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:
- (a) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in Clause 64.8 below; and

- (b) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the safety data sheet supplied, shall report this information in writing to the Contractor.
- 64.3 If the Contractor is required under, or in connection with, this Contract to supply Articles or components of Articles that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.
- 64.4 The Contractor shall provide to the Authority a completed copy of DEFFORM 68.
- 64.5 If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the CLP Regulation 1272/2008 and REACH the Contractor shall comply with the hazard reporting requirements of DEF-STAN 07-085 Design Requirements for Weapons and Associated Systems.
- 64.6 If the Articles, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:
- (a) activity; and
- (b) the substance and form (including any isotope).
- 64.7 If the Articles, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.
- 64.8 Any SDS to be provided in accordance with this Clause 64 (Supply of Data for Hazardous Articles, Materials and Substances), including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 64.1(a) and 64.2(a), any information arising from the provisions of Clauses 64.5, 64.6 and 64.7 and the completed DEFFORM 68, shall be sent directly to the Authority's Commercial Officer as soon as practicable, and no later than one (1) month prior to Delivery Date to which the SDS and other information referred to within this Clause 70.8 relates, unless otherwise stated in this Contract. In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
- (a) Hard copies to be sent to:
[REDACTED]
- (b) Emails to be sent to: [REDACTED]
- 64.9 Failure by the Contractor to comply with the requirements of this Clause 64 (Supply of Data for Hazardous Articles, Materials and Substances) shall be grounds for rejecting the affected Articles. Any withholding of information concerning hazardous Articles, materials or substances shall be regarded as a material breach for the purposes of Clause 67 (Contractor Default).
- 64.10 Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Contractor Manual.

Part 10 Termination

65. Dispute Resolution

- 65.1 Any and all disputes arising out of or in connection with this Contract shall be dealt with in accordance with Schedule 9 (Dispute Resolution Procedure).

66. Termination

- 66.1 This Clause 66 (Termination) sets out the circumstances in which the Authority may terminate this Contract.

Termination for Contractor Default

- 66.2 In the event of a Contractor Default the Authority may terminate this Contract. If the Authority wishes to exercise its right to terminate this Contract pursuant to this Clause 66.2 then the Authority shall provide a Termination Notice to the Contractor and this Contract shall terminate with immediate effect unless the Authority specifies a later Termination Date in its Termination Notice in which case this

Contract shall terminate on such later date. If the Authority wishes to exercise its right to terminate this Contract pursuant to this Clause 66.2 then the Authority shall provide a Termination Notice to the Contractor within eighty (80) Business Days of the Authority becoming aware of an Irremediable Breach and forty (40) Business Days of a Remediable Breach.

Termination for Force Majeure

66.3 In the circumstances referred to in Clause 75 (Force Majeure Events) or Clause 32 (Import and Export Licences) the Authority may terminate this Contract. If the Authority wishes to exercise its right to terminate this Contract pursuant to this Clause 66.3 then the Authority shall provide a Termination Notice to the Contractor specifying a Termination Date at least twenty (20) Business Days after the date of the Termination Notice and the Contract shall terminate on such Termination Date.

Termination for Convenience

66.4 The Authority shall, in addition to its right under any other terms of this Contract, have the right to terminate this Contract at any time ("**Termination for Convenience**") by giving to the Contractor a Termination Notice specifying a Termination Date at least sixty (60) Business Days after the date of the Termination Notice and this Contract shall terminate on such Termination Date.

66.5 The only rights to terminate this Contract are as set out in this Clause 66 (Termination).

67. Contractor Default

Events constituting Contractor Default

67.1 The occurrence of any of the following events shall constitute a Contractor Default:

- (a) an Irremediable Breach;
- (b) a Remediable Breach which:
 - (i) is capable of remedy within forty (40) Business Days of the date on which the Authority notifies the Contractor in writing of the Remediable Breach, or if earlier, the date on which the Contractor first became aware of the Remediable Breach, and is not remedied by the Contractor within those forty (40) Business Days; or
 - (ii) is not capable of remedy within forty (40) Business Days of the date on which the Authority notifies the Contractor in writing of the Remediable Breach, or if earlier, the date on which the Contractor first became aware of the Remediable Breach, and the Remediation Plan either:
 - (A) is not accepted by the Authority after the matter has been escalated to the Monthly Management Board in accordance with Schedule 6 (Governance);
 - (B) is not implemented in accordance with its terms; or
 - (C) fails to achieve remediation of the Remediable Breach by the date specified in the Remediation Plan (or such other date as may be agreed between the Parties for such remediation to be achieved);
- (c) a Persistent Breach;
- (d) an Insolvency Event in relation to the Contractor;
- (e) a breach of Clause 22 (Corrupt Gifts and Payments of Commission);
- (f) the Authority becomes entitled to terminate this Contract pursuant to Clause 32 (Import and Export Licences);
- (g) the Authority becomes entitled to terminate this Contract pursuant to Clause 61 (Security Measures);
- (h) the Authority becomes entitled to terminate this Contract pursuant to Clause 63 (Cyber);
- (i) the Authority becomes entitled to terminate this Contract pursuant to Clause 49 (Tax Compliance);
- (j) the Authority becomes entitled to terminate this Contract pursuant to Clause 15 (Change of Control of the Contractor); or
- (k) the Contractor fails to meet the required Actual Performance Level for the Key Performance Indicators in accordance with Paragraph 8.3 of Schedule 5.

Persistent Breach

- 67.2 Without prejudice to Clause 67.1 (Contractor Default), if a particular breach of this Contract has continued for more than thirty (30) days or the same or similar breach has occurred more than three (3) times in any twelve (12) month period then the Authority may serve a notice (an "**Initial Warning Notice**") on the Contractor:
- (a) specifying that it is a formal warning notice;
 - (b) giving reasonable details of the breach; and
 - (c) stating that such breach is a breach which, if it recurs frequently or continues, may constitute a Contractor Default in accordance with Clause 67.1(c).
- 67.3 If, following service of an Initial Warning Notice, the breach specified in the Initial Warning Notice has continued beyond thirty (30) days (or such longer period, if any, as may be agreed between the Parties) or recurred two (2) or more times within the six (6) month period after the date of service, then the Authority may serve another notice (a "**Final Warning Notice**") on the Contractor:
- (a) specifying that it is a Final Warning Notice;
 - (b) stating that the breach specified has been the subject of an Initial Warning Notice served within the six (6) month period prior to the date of service of that Final Warning Notice; and
 - (c) stating that if such breach continues for more than thirty (30) days or recurs on two (2) or more occasions within the six (6) month period after the date of service of that Final Warning Notice, the breach will be a persistent breach constituting a Contractor Default ("**Persistent Breach**").

Remedies for Contractor Default

- 67.4 Without prejudice to any other remedies the Authority may have under this Contract, if a Contractor Default occurs, the Authority shall be entitled to:
- (a) terminate this Contract pursuant to Clause 66.2 (Termination for Contractor Default); or
 - (b) withhold any payment due to the Contractor until either:
 - (i) if the Contractor Default is capable of being remedied by the Contractor, after the Contractor Default has been remedied;
 - (ii) if the Contractor Default is not capable of being remedied but the Authority agrees to accept some alternative solution that will not result in remediation, completion of that alternative solution as agreed by the Authority; or

68. Consequences of Termination**Contract Exit Plan**

- 68.1 The Parties acknowledge that if the Authority serves a Termination Notice it will be necessary to put in place a Contract Exit Plan to set out the activities that need to be carried out by the Contractor as a result of termination of this Contract.
- 68.2 The matters which must be addressed in the Contract Exit Plan include:
- (a) arrangements for compliance with any Authority directions on the completion of FPM-A Project Work issued pursuant to Clause 68.6;
 - (b) arrangements for the transfer of information, records and rights in accordance with any Authority instructions pursuant to Clause 68.7;
 - (c) delivery to the Authority of details of all Undelivered Assets and Undelivered Deliverable Documents and:
 - (i) arrangements for the delivery or taking possession of any Undelivered Retained Items pursuant to Clauses 68.8 to 68.9; and
 - (ii) arrangements for the removal or return of any Delivered Assets and Delivered Deliverable Documents that are not Delivered Retained Items pursuant to Clauses 68.8 to 68.9;
 - (iii) arrangements for the safe and secure disposal or diversion to alternative uses of any Undelivered Assets and Undelivered Deliverable Documents, and any Delivered Assets and Delivered Deliverable Documents, that are not Retained Items;

- (d) arrangements for the handover of FPM-A from the Contractor to the Authority (or a third party nominated by the Authority);
- (e) return or disposal of Government Furnished Assets that have been issued to the Contractor;
- (f) compliance with any legal and contractual obligations arising as a result of termination of this Contract;
- (g) settling of financial liabilities between the Parties;
- (h) arrangements for the termination, amendment or continuation of Sub-Contracts;
- (i) provision of co-operation and assistance to the Authority in accordance with Clause 68.10;
- (j) Authority actions or decisions required to enable the Contractor to perform its obligations under the Contract Exit Plan; and
- (k) timescales, individual responsibility owners, risks and opportunities and security aspects in relation to the completion of the matters set out in this Clause 68.2.

68.3 The Authority shall specify in any Termination Notice its requirements for the Contract Exit Plan including in respect of the matters referred to in Clause 68.1 and a proposed Contract Exit Period. The Contractor shall provide to the Authority within twenty (20) Business Days (or such other period as may be agreed between the Parties) of any such Termination Notice a draft Contract Exit Plan addressing the requirements so specified by the Authority including any activity necessary to meet the Authority's requirements for the Contract Exit Period including:

- (a) comments on the duration of the proposed Contract Exit Period and any alternative proposals with supporting information;
- (b) proposals for additional or different activity to that proposed by the Authority, with supporting information; and
- (c) estimated Contract Exit Costs, subject always to the provisions of this Clause 68. (Consequences of Termination) as to the extent to which the Contractor is entitled to be paid the Contract Exit Costs.

When producing the draft Contract Exit Plan the Contractor shall take all reasonable steps to ensure that the activities and arrangements described in it address the matters set out in Clause 68.1 in an orderly, timely and cost-effective manner.

68.4 Within twenty (20) Business Days after receipt of the draft Contract Exit Plan from the Contractor the Authority shall determine the content of and issue the Contract Exit Plan (which shall include the duration of the Contract Exit Period and shall comply with the requirements of Clause 68.1), having regard to the information provided by the Contractor in accordance with this Clause 68.3. Upon the issue of the Contract Exit Plan the Contractor shall implement the Contract Exit Plan during the Contract Exit Period in accordance with its terms.

68.5 The Authority may amend the Contract Exit Plan at any time prior to completion of implementation of the Contract Exit Plan provided that:

- (a) it provides at least ten (10) Business Days' (or such other period as may be agreed by the Parties) notice of any such proposed change to the Contractor; and
- (b) takes account of any comments or proposals provided by the Contractor before making such amendment.

Authority directions on completion of Work

68.6 Following the issue of a Termination Notice the Authority shall be entitled in its reasonable discretion to direct the Contractor:

- (a) where work on an element of the Contractor Deliverables has not been started or an obligation under this Contract has not been fulfilled, not to start work on that element of the Contractor Deliverables or to fulfil that obligation;
- (b) to complete, in accordance with this Contract, the provision of any element of the Contractor Deliverables;
- (c) as soon as reasonably practicable, to take such steps as will ensure that the production of the Contractor Deliverables and any parts and components thereof is reduced and stopped as quickly as possible; and

- (d) to terminate on the best possible terms any Sub-Contracts and orders in support of the Contractor Deliverables that have not been completed, taking into account any direction given under Clauses 68.6(b) and 68.6(c) above;

Transfer of information, records and rights

68.7 Following the issue of a Termination Notice, the Contractor shall:

- (a) transfer all Information of the Authority in its possession or control (including all back-up copies) to the Authority or such third party as advised to the Contractor by the Authority and confirm in writing that it does not retain the Authority's Information; and
- (b) if and to the extent required by the Authority, make available to the Authority:
 - (i) all Project Records;
 - (ii) if possible by the Contractor using reasonable efforts, the benefit of any Sub-Contracts which the Contractor may have entered into for the supply of any goods, works or services for FPM-A and/or the Deliverable Documents;
 - (iii) any insurance policies and its interest therein which the Contractor is able to assign, where such policies have been effected by the Contractor solely in connection with this Contract; and
 - (iv) any licences required to make use of third party Intellectual Property Rights or other rights or assets procured in connection with this Contract.

Taking the benefit of work performed

68.8 If this Contract is terminated at any time, the Authority shall have the option, exercisable at its reasonable discretion, to take the benefit of any or all of the work performed by the Contractor under this Contract (either prior to the Termination Date or pursuant to Clause 68.6) in accordance with Clause 68.9.

68.9 If the Authority exercises the option under Clause 68.8:

- (a) the Contractor shall, in accordance with Authority's directions, either:
 - (i) deliver to the Authority (or to any party or premises nominated by the Authority); or
 - (ii) permit the Authority (or its representative) to enter the Contractor's premises and take possession of,

any Undelivered Assets and Undelivered Deliverable Documents to be retained by the Authority (the "**Undelivered Retained Items**") (which shall be as chosen by the Authority at its reasonable discretion where the Authority exercises the option under Clause 68.8);
- (b) the Contractor shall, in accordance with Authority's directions, either:
 - (i) remove from the Authority's premises (or any premises nominated by the Authority) and take possession of; or
 - (ii) permit the Authority to return to the Contractor's premises,

any Delivered Assets and Delivered Deliverable Documents not to be retained by the Authority (and any Delivered Assets and Delivered Deliverable Documents not subject to such directions shall be the "**Delivered Retained Items**", which shall be as chosen by the Authority at its reasonable discretion where the Authority exercises the option under Clause 68.8);
- (c) a fair and reasonable price shall be payable by the Authority for the Retained Items, taking into account the proportion of work carried out relative to the total scope of work under this Contract and the overall Contract Price (the "**Partial Contract Price**"); and
- (d) the Retained Items shall remain vested in and the absolute property of the Authority and any Undelivered Assets and/or Undelivered Deliverable Documents that are not Retained Items, any Delivered Assets and/or Delivered Deliverable Documents that are not Retained Items, shall vest in and become the absolute property of the Contractor.

Co-operation and assistance on termination

68.10 Following the issue of a Termination Notice, the Contractor shall provide such reasonable co-operation and assistance as may reasonably be required by the Authority to ensure that the termination of this Contract is effected with the minimum amount of disruption to the Skynet EC Programme. Such

assistance shall include responding with information and documentation to the Authority's reasonable questions relating to the provision of the Contractor's obligations under this Contract.

Continuation of obligations

- 68.11 Subject always to the requirements of the Contract Exit Plan, during the period from the date of the Termination Notice until the Termination Date the Contractor shall continue to perform its obligations in accordance with the Contract.

Termination for Contractor Default

- 68.12 Where the Authority has terminated the Contract under Clause 66.2 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

- (a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
- (b) obtaining the Contractor Deliverable in substitution from another Contractor.

Termination for Force Majeure and Termination for Convenience

- 68.13 If the Contract is terminated in accordance with Clause 66.3 or 66.4, the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

- (a) not start work on any element of the Contractor Deliverables not yet started;
- (b) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
- (c) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
- (d) terminate on the best possible terms any Sub-Contracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under Clauses 68.13 (b) and 68.13 (c).

- 68.14 Where this Clause applies (and subject always to the Contractor's compliance with any direction given by the Authority under Clause 68.13:

- (a) the Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
 - (i) in the possession of the Contractor at the date of termination; and
 - (ii) provided by or supplied to the Contractor for the performance of the Contract,except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
- (b) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
 - (i) all such unused and undamaged materiel; and
 - (ii) Contractor Deliverables in the course of manufacture,that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority; and
- (c) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

- 68.15 The Authority shall (subject to Clause 68.16 below and to the Contractor's compliance with any direction given by the Authority in Clause 68.13 above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:

- (a) the Contractor taking all reasonable steps to mitigate such loss; and

- (b) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

68.16 The Authority's total liability under the provisions of this Clause shall be limited to the total price of the Contractor Deliverables payable under the Contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

68.17 The Contractor shall include in any Sub-Contract over £[REDACTED] which it may enter into for the purpose of the Contract, the right to terminate the Sub-Contract under the terms of Clauses 68.12 to 68.16 except that:

- (a) the name of the Contractor shall be substituted for the Authority except in Clause 68.14 (a);
- (b) the notice period for termination shall be as specified in the Sub-Contract, or if no period is specified twenty (20) Business Days; and
- (c) the Contractor's right to terminate the Sub-Contract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of Clause 67.

68.18 Claims for payment under this Clause shall be submitted in accordance with the Authority's direction.

69. Remediation

69.1 This Clause 69 (Remediation) shall apply if there is a material breach by the Contractor of this Contract which is capable of being remedied (and for these purposes, "remedied" shall include not only the remedying of the consequences of such material breach that have already occurred but also the avoidance of consequences of such breach that have not yet occurred but it is reasonable to anticipate will occur without steps to avoid them being taken) (a "**Remediable Breach**"); or

Short-term remediation

69.2 If a Remediable Breach has occurred and is capable of being remedied within twenty (20) Business Days of the Contractor becoming aware of the Remediable Breach, the Contractor shall remedy such Remediable Breach within that twenty (20) Business Day period.

Remediation Plan

69.3 If a Remediable Breach has occurred and is not capable of being remedied within twenty (20) Business Days of the Contractor becoming aware of the Remediable Breach, the Contractor shall notify the Authority's Project Manager (with a copy of such notification to be delivered to the Authority's Commercial Officer) within five (5) Business Days of the Contractor becoming aware of such Remediable Breach (a "**Remediation Notice**").

69.4 The Contractor shall produce and submit to the Authority for approval a Remediation Plan within twenty (20) Business Days (or such other time period as may be agreed by the Authority) after receipt of the Remediation Notice by the Authority. The Remediation Plan shall include as a minimum:

- (a) the actions required to remedy the Remediable Breach;
- (b) the actions required to ensure that reasonable steps are taken to prevent the occurrence of similar future events;
- (c) a timetable for the remediation to be achieved or response to be implemented as soon as is reasonably practicable; and
- (d) consideration of all regulatory and legislative requirements and guidelines, particularly in relation to safety and security and any information from Sub-Contractors of the Contractor.

69.5 The Authority shall, within twenty (20) Business Days (or such other period as may be agreed by the Parties) after receipt of the Remediation Plan, acting reasonably, either:

- (a) accept the Remediation Plan; or
- (b) reject the Remediation Plan, providing its reasons for such rejection and, to the extent reasonably practicable, proposing such amendments to the Remediation Plan as would render it acceptable to the Authority.

69.6 If the Authority rejects the Remediation Plan pursuant to Clause 69.5, the Contractor shall within ten (10) Business Days of receipt of such rejection either:

- (a) accept the Authority's proposed amendments in full;
 - (b) submit a revised Remediation Plan to the Authority, addressing the Authority's reasons for rejection (and Clause 69.5 above shall apply to such revised submission); or
 - (c) escalate the matter to Senior Management Board in accordance with Schedule 6 (Governance).
- 69.7 Following acceptance of the Remediation Plan by the Authority, the Contractor shall implement the Remediation Plan in accordance with its terms. Pending acceptance of the Remediation Plan the Contractor shall take all reasonable steps to mitigate any adverse consequences of the Remediable Breach (as applicable).
- 69.8 The Contractor shall report to the Authority on the progress of implementation of the Remediation Plan in accordance with Schedule 6 (Governance).

No relief

- 69.9 The obligation of the Contractor to remedy a Remediable Breach shall not be affected by:
- (a) the Authority's acceptance or rejection of a Remediation Plan;
 - (b) any comments, expressions of opinion, agreements or endorsements by or on behalf of the Authority on a proposed Remediation Plan; or
 - (c) the implementation of a Remediation Plan.

Part 11 Liability and Insurance**70. Not Used****71. Indemnities**

- 71.1 Subject to Clause 72 (Limitations of Liability), the Contractor shall indemnify the Authority, its employees, agents and contractors on demand against all Losses suffered by the Authority, its employees, agents or contractors as a result of or in relation to any:
- (a) death or personal injury of any person;
 - (b) loss of or damage to property;
 - (c) third party actions, claims, demands, costs, charges and expenses (including legal expenses);
 - (d) breach by the Contractor or any Sub-Contractor or any Contractor Personnel of Clause 23 (Protection of Personal Data); or
 - (e) failure by the Contractor or any Sub-Contractor or any Contractor Personnel to comply with applicable Law,

which arises out of, or in consequence of, the performance or non-performance by the Contractor of its obligations under this Contract or any act or omission of the Contractor or any Sub-Contractor or any Contractor Personnel.

72. Limitation of Liability**Unlimited Liabilities**

- 72.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - (b) fraud or fraudulent misrepresentation by it or its employees;
 - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any liability to the extent it cannot be limited or excluded by law.
- 72.2 The financial caps on the Contractor's liability set out in Clause 72.4 below shall not apply to the following:
- (a) for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to [include all Indemnities that are included in the Contract];

- (b) the Contractor's indemnity in relation to Paragraph 12 (Intellectual Property in Software) and Paragraph 5 (Third Party IP - Rights and Restrictions) of Schedule 10 (Intellectual Property Rights);
- (c) breach by the Contractor of Clause 23 (Protection of Personal Data) and Data Protection Legislation; and
- (d) to the extent it arises as a result of a default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

72.3 The financial caps on the Authority's liability set out in Clause 72.5 below shall not apply to any indemnity given by the Authority to the Contractor under this Contract;

Financial Limits

72.4 Subject to Clauses 72.1 and 72.2 and to the maximum extent permitted by Law:

- (a) throughout the Contract Period the Contractor's total liability in respect of losses that are caused by Contractor's Breach shall in no event exceed:
 - (i) in respect of Clause 37 (Contractors Personnel at Government Establishments) £ [REDACTED] pounds sterling in aggregate;
 - (ii) in respect of Clause 66 (Termination) £[REDACTED] pounds sterling in aggregate;
 - (iii) in respect of Clause 35 (Government Furnished Assets) £[REDACTED] pounds sterling in aggregate; and
 - (iv) in respect of Clause 51 (Risk in Deliverables) £[REDACTED] pounds sterling in aggregate;
- (b) without limiting Clause 72.4(a) and subject always to Clause 72.1, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding Service Credits paid or payable in accordance with Paragraph 9 of Schedule 5 (Pricing and Payment)) whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £[REDACTED] pounds sterling);
- (c) on any and each agreed extension to the term of this Contract, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 72.4(a) and 72.4(b) above shall be fully replenished such that on and from each such exercise or extension of the term of this Contract, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 72.4(a) and 72.4(b) of this Contract.

72.5 Subject to Clauses 72.1, 72.3, and 72.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Contract Price paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

72.6 Clause 72.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Contract Price.

72.7 Not used.

Consequential Loss

72.8 Subject to Clauses 72.1, 72.2 and 72.9, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

- (a) indirect loss or damage;
- (b) special loss or damage;
- (c) consequential loss or damage;
- (d) loss of profits (whether direct or indirect);
- (e) loss of business opportunities (whether direct or indirect); or
- (f) damage to goodwill (whether direct or indirect)

even if that Party was aware of the possibility of such loss or damage to the other Party.

- 72.9 The provisions of Clause 72.8 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- (a) any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - (i) to any third party;
 - (ii) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - (b) any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
 - (c) the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Contract Period and any option period or agreed extension to the Contract Period (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
 - (d) any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
 - (e) damage to the Authority's physical property and tangible assets, including damage under Clause 37 and Clause 35;
 - (f) costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
 - (g) any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Contractor Default (including the extension or replacement of such contracts);
 - (h) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
 - (i) any savings, discounts or price reductions during the Contract Period and any option period or agreed extension to the Contract Period committed to by the Contractor pursuant to this Contract.

Invalidity

- 72.10 If any limitation or provision contained or expressly referred to in this Clause 72 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 72.

Third Party Claims or Losses

- 72.11 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under Sections 5 and 12 of Schedule 10 (Intellectual Property Rights) or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
- 72.12 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
- 72.13 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No Double Recovery

- 72.14 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred.

73. Insurance**Obligation to maintain the Required Insurances**

- 73.1 Without prejudice to its other obligations to the Authority under this Contract, including its indemnity obligations, the Contractor shall for the periods specified in Schedule 16 (Required Insurances) take out and maintain, or procure the taking out and maintenance of, the insurances set out in Schedule 16 (Required Insurance) and this Clause 73 (Insurance) (together the "**Required Insurances**"). The Contractor shall ensure that each of the Required Insurances is effective no later than the date on which the relevant risk commences.
- 73.2 The Required Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of the risks insured in the international insurance market from time to time, being mindful of the special nature of the Authority's business.
- 73.3 Where specified in Schedule 16 (Required Insurances), the Contractor shall ensure that the relevant policy of insurance contains an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable pursuant to this Contract.
- 73.4 The Required Insurances shall be taken out and maintained with insurers who are:
- (a) of good financial standing;
 - (b) appropriately regulated; and
 - (c) of good repute in the international insurance market.
- 73.5 Where the minimum limit of indemnity required in relation to any of the Required Insurances is specified as being "in the aggregate" and a claim or claims are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract.

General obligations

- 73.6 Without limiting the other provisions of this Contract, the Contractor shall:
- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to this Contract as it would be reasonable to expect of a contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - (b) hold all policies in respect of the Required Insurances and cause any insurance broker effecting the Required Insurances to hold any insurance slips and other evidence of placing cover representing any of the Required Insurance to which it is a party.
- 73.7 Without prejudice to this Clause 73 (Insurance), mindful of the special nature of the Authority's business, if the Contractor considers (acting reasonably) that compliance with any obligation in this Clause 73 (Insurance) and/or Schedule 16 (Required Insurances), is likely to require the disclosure of sensitive information, raise issues of national security or lead to a conflict with its other obligations under this Contract, the Contractor shall be required to first discuss the matter with the Authority before proceeding.

Non-invalidity and failure to insure

- 73.8 The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

- 73.9 Where the Contractor has failed to purchase any of the Required Insurances or maintain any of the Required Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Contractor to purchase the relevant Required Insurances, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

Evidence of insurance

- 73.10 The Contractor shall upon the Effective Date, and within fifteen (15) Business Days after the renewal or replacement of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in force and effect and meet in full the requirements of this Clause 73 (Insurance) and Schedule 16 (Required Insurances). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of any of its liabilities and obligations under this Contract.
- 73.11 The Contractor shall from time to time upon request by the Authority provide evidence, in a form satisfactory to the Authority, that premiums payable under the Required Insurances have been paid in accordance with the terms of the relevant policy and that the Required Insurances are in full force and effect in accordance with this Clause 73 (Insurance) and Schedule 16 (Required Insurances).

Cancellation

- 73.12 Subject to Clause 73.13, the Contractor shall notify the Authority's Representative in writing at least ten (10) Business Days prior to any cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- 73.13 Without prejudice to the Contractor's obligations under this Clause 73 (Insurance), Clause 73.12 shall not apply where the termination of any Required Insurance occurs purely as a result of a change of insurer in respect of any of the Required Insurances.

Insurance claims

- 73.14 Subject to Clause 73.7, the Contractor shall promptly notify to insurers any matter arising from, or in relation to, this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to or arising out of this Contract, the Contractor shall co-operate with the Authority and assist the Authority in dealing with such claim at its own expense including providing information and documentation in a timely manner and liaising with the Contractor's insurers if a claim can be made under the Required Insurances.
- 73.15 Except where the Authority is the claimant party, the Contractor shall give the Authority notice within twenty (20) Business Days after any claim in excess of [REDACTED] relating to or arising out of this Contract that:
- (a) is made on any of the Required Insurances; or
 - (b) but for the application of the applicable policy excess, would have been made on any of the Required Insurances,
- and in either case shall (if required by the Authority) provide full details of the incident giving rise to the claim or which would have given rise to the claim but for the policy excess.

Premiums and deductibles

- 73.16 As at the Effective Date the Contract Price includes all costs associated with taking out and maintaining the Required Insurances in accordance with this Clause 73 (Insurance) and the Contractor shall not be entitled to a Contract Price Change in respect of any costs incurred in taking out and maintaining the Required Insurances (including the payment of, or any change to, any premium payable).
- 73.17 Where any Required Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances where under the terms of this Contract or otherwise.

74. Requirement to Provide a Guarantee

- 74.1 Not Used.

75. Force Majeure

Notification of Force Majeure

- 75.1 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as reasonably practicable. The notification to the Authority's Commercial Representative or the Contractor's Commercial Representative (as applicable) shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 75.2 As soon as practicable following such notification, the authorised representatives of the Parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

Effect of a Force Majeure Event

- 75.3 The Parties shall at all times following the occurrence of a Force Majeure Event use reasonable endeavours to prevent and mitigate the effects of any delay or failure by the Affected Party to comply with its obligations under this Contract and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 75.4 Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, nor shall either Party incur any liability to the other Party for any Losses incurred by that other Party, nor shall the Authority be entitled to make any Payment Withholds to the extent that a Force Majeure Event occurs and the Affected Party is prevented from performing obligations by that Force Majeure Event.

Termination

- 75.5 If no terms are agreed pursuant to Clause 75.2 on or before the date falling twenty (20) Business Days, or other such agreed period, after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty (120) Business Days, the Authority may terminate this Contract in accordance with Clause 66.3 (Termination for Force Majeure).

Cessation of Force Majeure Event

- 75.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 75.7 Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

76. Measures in a Crisis

- 76.1 The Authority may notify the Contractor in writing (including by email) if, at any time, in view of:
- (a) the national interest, the requirements of national security or the occurrence of a state of war or other emergency (whether or not involving hostilities); or
 - (b) a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster,
- (whether or not such interest, requirements, state of war, emergency, major accident, crisis or natural disaster is a Force Majeure Event), the Authority believes that it is necessary or appropriate to take all or any of the measures described in Clauses 76.4 to 76.6 (such notice being a "**Crisis Notice**"). Each Crisis Notice shall specify the region(s) to which it applies.
- 76.2 Upon and after issuing a Crisis Notice, the Authority shall be entitled to exercise all or any of its rights pursuant to Clauses 76.4 to 76.6 from time to time in connection with the circumstance(s) and issue(s) giving rise to the issuance of the Crisis Notice, including in connection with addressing, resolving or mitigating the effects of such circumstance(s) and issue(s).
- 76.3 If a United Kingdom statutory direction is placed upon the Contractor, the Contractor shall not be obliged to comply with instructions of the Authority (whether such instructions are provided within, or

pursuant to, a Crisis Notice), to the extent that such instructions are contrary to such United Kingdom statutory direction. In such a case, the Contractor shall instead comply with instructions of the Authority to the extent that they are not contrary to such United Kingdom statutory direction.

- 76.4 The Authority may require the Contractor, within such reasonable period as may be specified by the Authority, to provide such information as the Authority may in its sole discretion require, including information relating to all or any of the following matters:
- (a) The Contractor Deliverables and Services which are either currently being carried out or which are due to be carried out within a time period specified by the Authority;
 - (b) the Contractor's current deployment of Contractor Personnel, including information relating to the location of Contractor Personnel and the relevant Contractor Deliverable or Service that the Contractor Personnel are engaged in the provision of; and
 - (c) the respective capacity of each Contractor Deliverable or Service or parts thereof or items of Equipment.
- 76.5 Upon providing the Authority with the information requested pursuant to Clause 76.4 or upon expiry of the period specified by the Authority for the supply of such information, the Contractor shall, at the request of the Authority, discuss proactively and in good faith with the Authority any matters which the Authority, in its opinion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation, re-prioritisation or reorganisation of the Contractor Deliverables or Services provided, or to be provided, by the Contractor. Such discussions will aim to address effectively the circumstance(s) and issue(s) which gave rise to the issuing of a Crisis Notice, including the following matters:
- (a) the alteration (including the early completion, temporary or permanent suspension, or cancellation) of the provision of all or part of the Services; and
 - (b) the implementation of any new services,
- and the Contractor shall (acting in good faith) use all reasonable endeavours to reach agreement with the Authority as a matter of urgency on such matters. Once such agreement has been reached, the Contractor shall issue a Contractor Change Notice in respect of the same in accordance with the Contract Change Procedure and shall act in accordance with such agreement.
- 76.6 Irrespective of whether any of the measures described in Clauses 76.4 and 76.5 have been discussed, taken, required to be taken or completed, the Authority may at any time and in its sole discretion following the issuance of a Crisis Notice require the Contractor to comply with any reasonable written instructions issued by the Authority, including instructions in relation to all or any of the following matters:
- (a) the alteration (including the early completion, temporary or permanent suspension, or cancellation) of the provision of all or part of the Contractor Deliverables or Services, in which case the Contractor shall procure that any such alteration and the implementation of such alteration is carried out on such terms with such parties which result in the least possible loss or damage to the Contractor;
 - (b) making Contract Changes to this Agreement required by the Authority prior to the Parties following the Contract Change Procedure. If any Contract Changes required by the Authority survive the issue of a notice under Clause 76.7, the Contractor shall promptly (and in any event within one (1) Business Day) raise a Contractor Change Notice in respect of such Contract Changes; or
 - (c) the Contractor bringing under the administration and control of the Authority, using or making available for use, any Contractor Personnel, Equipment, Contractor Deliverable, Service or any part thereof, in accordance with the Authority's directions.
- 76.7 Following the issue of a Crisis Notice, the Contractor shall comply with the provisions of Clauses 36.4 to 36.6 until such time as the Authority notifies the Contractor in writing that this is no longer a requirement in connection with the circumstance(s) and issue(s) giving rise to the issue of that Crisis Notice.
- 76.8 In respect of any Crisis Notice, until such notice is issued in accordance with Clause 76.7, the Contractor shall provide regular updates to the Authority on its ability to perform the Contractor Deliverable or Services whilst the circumstance(s) and issue(s) giving rise to the issuing of that Crisis Notice are on-going. The Contractor shall communicate any concerns to the Authority promptly and shall ensure that there is an informed exchange of information throughout the period beginning on the

date on which the Crisis Notice is issued and ending on the date that the Authority notifies the Contractor in accordance with Clause 36.7.

Charges

- 76.9 The charges payable in connection with the alteration (including the early completion, or temporary or permanent suspension, or cancellation) of the provision of all or part of the Contractor Deliverable or Services in response to a Crisis Notice and the circumstances and issues which gave rise to the issuing of a Crisis Notice shall be calculated in accordance with Schedule 5 (Pricing and Payment).
- 76.10 Without prejudice to Clause 76.9, to the extent that any work undertaken by the Contractor in accordance with the Authority's reasonable written instructions during the time period that: (a) starts on the date on which the relevant Crisis Notice is issued; and (b) ends on the date on which a further notice is issued in accordance with Clause 76.7, is not covered by express terms of this Contract (including a Contract Change Notice) or any other express written agreement between the Parties:
- (a) the Authority shall pay to the Contractor an amount calculated in accordance with the principles set out in Schedule 5 (Pricing and Payment) as if such work had been undertaken in connection with the implementation of a Contract Change; and
 - (b) the Contractor shall not be considered to be in breach of its obligations under this Agreement (but only where its failure to perform its obligations is as a direct result of its compliance with such reasonable written instructions).