



Contract Number: MCS/701578537

Description: Maritime Sensor Enhancement Team (M-SET)

Dated 11th December 2023

The Secretary of State for Defence for the United Kingdom of Great Britain and Northern Ireland

(Authority)

Thales UK Limited

(Contractor)

Contents

1	Schedule of Requirements	5
2	DEFCONs and DEFFORMs	7
3	Definitions and interpretation	17
4	Order of Precedence	41
5	Conditions Precedent	42
6	Representations, Warranties and Undertakings	43
7	Duration	47
8	Contractor's General core Obligations	47
9	Additional Services and Change Governance	55
10	Deliverable Documentation	61
11	Pricing and Instalments	62
12	Payment of Contract Price	65
13	Performance Levels and Performance Incentives	68
14	Payments - General	72
15	Indemnity	72
16	Step-In Rights	73
17	Relief Events	76
18	Force Majeure Events	79
19	Contract Termination (other than a Force Majeure Event based termination)	82
20	Transfer Regulations	85
21	Exit Management	86
22	Continuing Obligations	86
23	Financial Distress	86
24	Parent Company Guarantee	87
25	Spares and Repairs	87
26	Quality Requirements	88
27	Obsolescence Management	89
28	Health and Safety	89
29	Independent Safety Auditors, Advisors and Assessors	92
30	Interchangeability	92

31	Magnetic Signature Requirements	92
32	Protection of Equipment from Electrostatic Discharge Damage	92
33	Capability Protection	93
34	Risk Plan/Assessment	93
35	Not used	93
36	Continuous Improvement	93
37	Environment	94
38	Contract Volume Control	95
39	Change in Law	96
40	Government Grants	98
41	Access, Audit and Inspection	98
42	Intellectual Property Rights	99
43	Government Furnished Assets	102
44	Licences	107
45	Contract Governance	107
46	Dispute Resolution	107
47	Business Continuity Management	108
48	Partnering Principles	109
49	Not used	109
50	Amendments to Contract	109
51	Sub-Contracts	109
52	Assignment	113
53	Public Relations and Publicity	113
54	Change of Control	114
55	Confidentiality	116
56	Export Licences, Import Licences and customs clearance	116
57	Place of Business	117
58	Security Aspects	117
59	Sustainable Procurement	118
60	Shared Data Environment	118
61	Limitation of Liability	118
62	Not Used	128

63	Compliance	128
64	Qualifying Defence Contract	129
65	Single Source Contracting Regulations (SSCR) Contract Reporting	130
66	Entire Agreement	130
67	Severability	130
68	Legal Relationship between the Parties	131
69	Remedies and Waivers	131
70	Further Assurance	132
71	Governing Law and Jurisdiction	132

Appendix 1 – DEFFORM 111

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Annex A – Statement of Requirements

Annex B – Key Performance Measurement, Monitoring and Reporting

Annex C – Master Assumptions, Dependencies & Exclusion List (MADEL)

Annex D – Codes and Standards

Annex E – Deliverable Documentation

Annex F – Governance

Annex G – Contract Payment Plan

Annex H – Financial Distress

Annex I – Contract Rates

Annex J – Contract Change Proposal Forms

Annex K – Operational Damage – Sentencing Events Form

Annex L – Task Approval Form (TAF)

Annex M - Pricing Materials

Annex N – IPR Conditions under Pre-Existing Contracts

Annex O – DEFFORM 315 (Draft Contract Data Requirements (CDR) – Data Deliverables)

Annex P – Government Furnished Equipment

Annex Q – Information and Services

Annex R – Business Tenancy Agreements

Annex S – Exit Management

Annex T – Parent Company Guarantee (PCG)

Annex U – Partnering Principles

Annex V – Security Aspects Letter

Annex W - Cyber

Annex X – DEFFORM 177 (Design Rights and Patents (Sub-Contractor's Agreement))

Annex Y – DEFFORM 687C (Electronic Information Sharing Agreement (EISA))

Annex Z – Safety Net

Annex AA – Confidentiality Undertaking

Annex AB – Transfer Regulations

Annex AC – Approved Key Sub-Contractors

Annex AD – DEFFORM 528

Annex AE – DEFFORM 532 (Personal Data Particulars)

Annex AF – DEFFORM 539A (Contractor Commercially Sensitive Information)

Annex AG – Commercial Exploitation Levy Agreement for Hardware

Annex AH – Integrated Logistics Support Plan

Annex AI – Initial Reliability and Maintainability Plan

Annex AJ – Required Insurances

Annex AK – Not Used

Annex AL – MSET Social Value Plan

Maritime Sensor Enhancement Team (M-SET) Contract

Dated

Between

- (1) **The Secretary of State for Defence** of the United Kingdom of Great Britain and Northern Ireland (the **Authority**); and
- (2) **Thales UK Limited** registered in England with number 00868273 whose registered office is at 350 Longwater Avenue, Green Park, Reading, Berkshire, United Kingdom, RG2 6GF (the **Contractor**).

Background

- A The Authority requires follow-on support to be provided beyond the expiry of the existing Sensors Support Optimisation Programme (**SSOP**) Contract dated [01/01/2024] between the Authority and the Contractor.
- B The Parties have agreed to enter into this Contract for the provision of providing enduring in-service support for sonar, periscopes, and electronic surveillance systems as well as ensure the availability, capability, reliability and obsolescence management of Authority Equipment (herein after defined) in accordance with the terms and conditions set out in this Contract.
- C This Contract is a Qualifying Defence Contract for the purposes of SSCR.

It is agreed:

1 Schedule of Requirements

Name and Address of the Contractor: Thales UK Limited 350 Longwater Avenue, Green Park, Reading, Berkshire RG2 6GF	MINISTRY OF DEFENCE	Contract No: MCS/701578537	
	Schedule of Requirements for Maritime Sensor Enhancement Team (M-SET)		
Issued with: Covering Letter	On:		
Item Number	Description	Period	Price
1	The Contractor shall be responsible for the delivery of equipment availability, including the support activities in accordance with Annex A (<i>Statement of Requirements</i>)	From and including 00:00 (London time) on 01 January 2024 up to and including the	£1,766,062,713 (as adjusted in accordance with the terms of this Contract) plus

	and Annex B (<i>Performance Measurement, Monitoring and Reporting</i>). A high-level summary of the support activities is contained in the list below:	earlier of 23:59 (London time) on 31 December 2038 and the Termination Date.	£29,519,163 Performance Incentive Amount (in accordance with Clause 13 of this Contract)
	Support Activity		
A	Programme & Contract Management		Included in Pricing above
B	Design Services		Included in Pricing above
C	Engineering		Included in Pricing above
D	Spares Procurement		Included in Pricing above
E	Repairs		Included in Pricing above
F	Disposal		Included in Pricing above
G	Performance Management		Included in Pricing above
H	Deliverable Documentation as specified at Annex E.		Included in Pricing above
I	Obsolescence Management		Included in Pricing above
2	Operational Damage tasking authorised through Clause 8.2 (<i>Operational Damage</i>)		Additional Work Limit of £30,000,000.00 for the Contract Period (as adjusted in accordance with the terms of this Contract)
3	Delivery of ad hoc tasks authorised through Clause 9 (<i>Additional Services and Change Governance</i>) for delivery by the Contractor		Additional Work Limit of £15,000,000.00 for the Contract Period (as adjusted in

		accordance with the terms of this Contract)
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2 DEFCONs and DEFFORMs

2.1 DEFCONs

The following DEFCONs shall apply to and shall be incorporated into this Contract (subject to the matters specified in any related note or notes):

DEFCON 5J (Edn 11/16)	Unique Identifiers
DEFCON 14 (Edn 11/22)	Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs
DEFCON 15 (Edn 06/21)	<p>Design Rights and Rights to Use Design Information</p> <p>Note 1: (Subject to Clauses 42.1 to 42.7 (inclusive)) the Contractor shall work in good faith with the Authority to develop a set of DEFFORM 315s which reflects any new designs, design modifications new materials or new processed under the Contract and the rights under DEFCON 15, sub-clauses 4a) to g)(inclusive). The Contractor shall not attempt to exclude background Intellectual Property from the DEFFORM 315 unless it is private venture developed and relates to self-standing materials, processes or designs. The Contractor shall assist the Authority with the compilation of any DEFFORM 315 relevant to any sub-contract.</p> <p>Note 2: The Authority shall be entitled to exercise the right of Modification under sub-clause 4.1(f) without regard to clause 12.a) of DEFCON 15.</p>
DEFCON 16 (Edn 06/21)	<p>Repair and Maintenance Information</p> <p>Note 1: (Subject to Clauses 42.1 to 42.7 (inclusive)) the Contractor shall work in good faith with the Authority to develop a set of DEFFORM 315s. The Contractor shall not attempt to exclude background Intellectual Property (as defined in clause 2 of DEFCON 16 (Edn 06/21)) from the DEFFORM 315 (as defined in clause 2 of DEFCON 16 (Edn 06/21)). The Contractor shall assist the Authority with the compilation of any DEFFORM 315 relevant to any sub-contract.</p>
DEFCON 21 (Edn 06/21)	Retention of Records

	<p>Note 1: Such DEFCON to be read in conjunction with Clause 42.2 (<i>Retention of Records</i>) of the Special Conditions.</p>
DEFCON 23 (Edn 06/21)	Special Jigs, Tooling and Test Equipment
DEFCON 68 (Edn 10/22)	<p>Supply Of Data For Hazardous Articles, Materials And Substances</p> <p>Note 1: The Parties acknowledge and agree that for the purposes of clause 12 of DEFCON 68 (Edn 10/22) the references therein to DEFCON 514 are replaced by limb (a)(ii) of the definition of Default.</p>
DEFCON 76 (Edn 11/22)	<p>Contractor's Personnel at Government Establishments</p> <p>Note 1: The Contractor's liability under clause 3 of DEFCON 76 (Edn 11/22) shall be subject to the limitations of liability specified in Clause 61 (<i>Limitation of Liability</i>) of the Special Conditions.</p> <p>Note 2: The Parties acknowledge and agree that for the purposes of clause 3 of DEFCON 76 (Edn 11/22) the references therein to DEFCON 611 shall be construed as also including Clause 15 (<i>Indemnity</i>) of the Special Conditions.</p>
DEFCON 90 (Edn 06/21)	<p>Copyright</p> <p>Note 1: For the purposes of clause 4c of DEFCON 90 the nations prescribed in the Contract shall be any NATO state or any other nation chosen at the discretion of the Authority or with whom the Authority has any form of reciprocal defence arrangement. The Authority undertakes to provide written notice to the Contractor before information is issued to any non-NATO country.</p>
DEFCON 91 (Edn 06/21)	<p>Intellectual Property Rights in Software</p> <p>Note 1: For the purposes of DEFCON 91 Deliverable Software includes Source Material.</p> <p>Note 2: For the purposes of clause 3e of DEFCON 91 the nations prescribed in the Contract shall be any NATO state or any other nation chosen at the discretion of the Authority or with whom the Authority has any form of reciprocal defence arrangement. The Authority undertakes to provide written notice to the Contractor before information is issued to any non-NATO country.</p>

DEFCON 113 (Edn 02/17)	Diversion Orders
DEFCON 117 (Edn 07/21)	Supply of Documentation for NATO Codification
DEFCON 126 (Edn 06/21)	<p>International Collaboration</p> <p>Note 1: The period referred to in clauses 2 and 3 of DEFCON 126 (Edn 06/21) shall be for as long as the relevant Authority Equipment remains in service with the United Kingdom Armed Services.</p>
DEFCON 129 (Edn 02/22)	<p>Packaging (For Articles Other Than Ammunition And Explosives)</p> <p>Note 1: For the purposes of clause 5b, unless otherwise notified by the Authority in writing the Contractor shall determine the appropriate standard or level of Packaging which shall at a minimum meet the requirements specified in BIMS.</p>
DEFCON 129J (Edn 11/16)	The Use Of The Electronic Business Delivery Form
DEFCON 501 (Edn 10/21)	Definitions and Interpretation
DEFCON 503 (Edn 06/22)	<p>Formal Amendments to Contract</p> <p>Note 1: Such DEFCON to be read in conjunction with Clause 50 (<i>Amendments to Contract</i>) of the Special Conditions.</p>
DEFCON 507 (Edn 07/21)	Delivery
DEFCON 513 (Edn 04/22)	Value Added Tax
DEFCON 515 (Edn 06/21)	Bankruptcy and Insolvency
DEFCON 516 (Edn 04/12)	Equality
DEFCON 518 (Edn 02/17)	Transfer
DEFCON 520 (Edn 08/21)	<p>Corrupt Gifts and Payments of Commission</p> <p>The right of termination under Paragraph 2 shall include where a "Prohibited Act" is carried out by a member of the Contractor's Group and/or a Key Subcontractor.</p>
DEFCON 522 (Edn 11/21)	Payment and Recovery of Sums Due
DEFCON 524 (Edn 12/21)	Rejection

	Note 1: The incorporation into this Contract and operation of DEFCON 524 (Edn. 02/20) are and remain without prejudice to the operation of Clause 17 (<i>Relief Events</i>) of the Special Conditions.
DEFCON 525 (Edn 10/98)	<p>Acceptance</p> <p>Note 1: For the purposes of clause 1a of DEFCON 525 (Edn 10/98) the period shall be 90 (ninety) calendar days;</p> <p>Note 2: The incorporation into this Contract and operation of DEFCON 525 (Edn. 10/98) are and remain without prejudice to the operation of Clause 17 (<i>Relief Events</i>) of the Special Conditions.</p>
DEFCON 526 (Edn 08/02)	Notices
DEFCON 527 (Edn 09/97)	<p>Waiver</p> <p>Note 1: For the purposes of this Contract any waiver issued for and on behalf of the Authority must be confirmed by the ACO or his authorised representative (as detailed in Box 1 of DEFFORM 111 as appended to this Contract).</p>
DEFCON 528 (Edn 07/21)	<p>Overseas Expenditure and Import Licences</p> <p>Note 1: The Parties acknowledge and agree that for the purposes of clause 18 of DEFCON 528 (Edn 07/21) DEFCON 514 is hereby replaced by limb (a)(ii) of the definition of Default.</p> <p>Note 2: For the purposes of clause 16 of DEFCON 528 the period of notice shall be 10 (ten) Business Days respectively.</p> <p>Note 3: Such DEFCON shall be read in conjunction with Clause 56 (<i>Export Licences, Import Licences and Customs Clearance</i>) of the Special Conditions.</p>
DEFCON 530 (Edn 12/14)	<p>Dispute Resolution (English Law)</p> <p>Note 1: Such DEFCON to be read in conjunction with Clause 46 (<i>Dispute Resolution</i>) of the Special Conditions.</p>
DEFCON 531 (Edn 09/21)	Disclosure of Information
DEFCON 532B (Edn 09/21)	Protection Of Personal Data

	Note 1: For the purposes of this Contract the DEFFORM 532 is at Annex AE (<i>DEFFORM 532</i>).
DEFCON 534 (Edn 06/21)	Prompt Payment (Sub-Contracts)
DEFCON 537 (Edn 12/21)	Rights of Third Parties
DEFCON 538 (Edn 06/02)	Severability
DEFCON 539 (Edn 01/22)	<p>Transparency</p> <p>Note 1: For the purposes of clause 1 of DEFCON 539 (Edn 01/22) the Contractor Commercially Sensitive Information is set out at Annex AF (<i>DEFFORM 539A - Contractor Commercially Sensitive Information</i>).</p> <p>Note 2: With respect to clause 5 of DEFCON 539 (Edn 01/22), if the Authority elects not to redact any information which the Contractor deems to be commercially sensitive, the Authority shall notify the Contractor of the Authority's election and the rationale for such election no less than 10 (ten) Business Days prior to its publication of the Transparency Information.</p>
DEFCON 550 (Edn 02/14)	Child Labour and Employment Law
DEFCON 601 (Edn 04/14)	Redundant Material
DEFCON 602A (Edn 12/17)	<p>Quality Assurance (With Deliverable Quality Plan)</p> <p>Note 1: Such DEFCON to be read in conjunction with Clause 26 (<i>Quality Requirements</i>) of the Special Conditions.</p>
DEFCON 604 (Edn 06/14)	<p>Progress Reports</p> <p>Such DEFCON to be read in conjunction with Annex F (Governance) of the Contract</p>
DEFCON 606 (Edn 07/21)	Change And Configuration Control Procedure
DEFCON 608 (Edn 07/21)	<p>Access and Facilities to be provided by the Contractor</p> <p>Note 1: For the avoidance of doubt, this DEFCON 608 shall also apply where the Authority needs to take any Required Action in accordance with Clause 16 (<i>Step-In Rights</i>).</p>
DEFCON 609 (Edn 07/21)	Contractor's Records

	Note 1: This DEFCON shall not apply to any records subject to DEFCON 21.
DEFCON 611 (Edn 02/16)	<p>Issued Property</p> <p>Note 1: Conditions 3 and 4 of DEFCON 611 shall apply to this Contract except that where the item of Issued Property has the benefit of a time-limited warranty or guarantee (of which the Contractor is aware or has been notified of by the Authority) and early opening of such item would have an adverse impact on the condition, usability or lifespan of such Issued Property (in such case the Contractor shall carry out the obligations under Condition 3 of DEFCON 611 in a timely manner).</p> <p>Note 2: Clause 5 shall be expanded to include the ability of the Authority to request that the Contractor procure any replacement Issued Property where the Authority is not able to do the same, the cost of such replacement to be met by the Authority.</p> <p>Note 3: Clause 8 of DEFCON 611 (Edn 02/16) shall not apply to this Contract.</p> <p>Note 5: For the purposes of Clause 11, the Contractor shall generally be obliged to notify the Authority of any defect or deficiency as soon as reasonably practicable including where such defect or deficiency arises in the context of providing the Services.</p> <p>Note 6: the Parties' respective rights and obligations provided in DEFCON 611 (Edn 02/16) and Notes 1 to 2 (immediately above) (inclusive) shall be read in conjunction with Clause 15 (<i>Indemnity</i>) of the Special Conditions.</p>
DEFCON 612 (Edn 06/21)	Loss of or Damage to the Articles
DEFCON 620 (Edn 06/22)	<p>Contract Change Control Procedure</p> <p>Note 1: For the purposes of DEFCON 620 (Edn 06/22) the Contractor Change Proposal shall be in the form set in the form set out in Annex J (<i>Contractor Change Proposal Forms</i>).</p> <p>Note 2: For the purposes of this Contract the Contractor shall allocate a unique sequential serial number to each Contractor Change Proposal.</p>

	<p>Note 3: For the purposes of this Contract a register of Contractor Change Proposals (both proposed and accepted in accordance with DEFCON 620 (Edn 06/22) shall be maintained by the Contractor and shall be issued to the Authority upon request including for discussion at the Annual Project Review Meeting.</p> <p>Note 4: any Contractor Change Proposal shall be submitted simultaneously to the Authority's Commercial Branch and the Authority's Project Manager</p> <p>Note 5: All costs and fees arising from compliance with Notes 2 and 3 hereto are included in the Core Price.</p> <p>Note 6: Where any Change is proposed by the Contractor pursuant to clause 14 of DEFCON 620 (Edn 06/22) (or otherwise), all costs and fees arising from compliance with DEFCON 620 (Edn 06/22) and the notes thereto are included in the [Core Price].</p> <p>Note 7: the Parties' respective rights and obligations provided in DEFCON 620 (Edn 06/22) and Notes 1 to 6 (immediately above) (inclusive) shall be read in conjunction with Clause 9 (<i>Additional Services and Change Governance</i>) of the Special Conditions.</p> <p>Note 8: Paragraph 8 in DEFCON 620 (Edn 06/22) shall be deemed to include any change in the Required Insurances including any change in premium or deductible.</p>
DEFCON 621A (Edn 12/21)	<p>Transport (if the Authority is responsible for Transport)</p> <p>Note 1: The Contractor shall in all cases ensure that the transportation of Articles is undertaken in a manner that shall offer best value for money to the Authority.</p> <p>Note 2: The Contractor shall promptly notify the Authority upon each instance of becoming aware of any requirement for the application of DEFCON 621A (Edn 06/97) in relation to the transportation of any Article or Articles. Upon receipt of each such notice the Authority shall use reasonable endeavours to comply with such request.</p> <p>Note 3: For any Article or Articles transported in accordance with DEFCON 621A (Edn 06/97) the delivery obligations of the Contractor shall be Ex-Works.</p>
DEFCON 621B (Edn 10/04)	<p>Transport (if the Contractor is responsible for Transport)</p>

	<p>Note 1: The Contractor shall in all cases ensure that the transportation of Articles is undertaken in a manner that shall offer best value for money to the Authority.</p> <p>Note 2: DEFCON 621B (Edn. 10/04) shall apply to the transportation of any or all Articles, save where the Contractor provides notice in accordance with note 2 to DEFCON 621A ((Edn 06/97) and the Authority using reasonable endeavours is able to comply with such notice.</p> <p>Note 3: For any Article or Articles transported in accordance with DEFCON 621B (Edn. 10/04) the Contractor's delivery obligations shall in addition to those requirements specified at clause 1 of DEFCON 621B (Edn. 10/04) include Delivered At Place (unless otherwise agreed by the Authority).</p>
DEFCON 624 (Edn 08/22)	Use of Asbestos in Arms, Munitions or War Materials
DEFCON 627 (Edn 11/21)	Quality Assurance - Requirement for a Certificate of Conformity
DEFCON 632 (Edn 11/21)	<p>Third Party Intellectual Property - Rights and Restrictions</p> <p>Note 1: AUTHORISATION BY THE CROWN FOR USE OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS</p> <p>Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.</p>
DEFCON 637 (Edn 05/17)	Defect Investigation and Liability
DEFCON 642 (Edn 07/21)	<p>Progress Meetings</p> <p>Such DEFCON to be read in conjunction with Annex F (Governance) of the Contract</p>
DEFCON 644 (Edn 07/18)	Marking of Articles
DEFCON 649 (Edn 12/21)	Vesting
DEFCON 656B (Edn 08/16)	Termination for Convenience – Over £5M

	Note 1: Such DEFCON to be read in conjunction with Clause 19 (<i>Contract Termination (Other than a Force Majeure based Termination)</i>) of the Special Conditions.
DEFCON 658 (Edn 10/22)	Cyber Note 1: For the purposes of DEFCON 658 (Edn 10/22) the Cyber Risk Level of the Contract is LOW as [set out in the Cyber Implementation Plan as annexed to the Agreement at Annex W].
DEFCON 659A (Edn 09/21)	Security Measures Note 1: Such DEFCON shall be read in conjunction with Clause 58 (<i>Security Aspects</i>) of the Special Conditions.
DEFCON 660 (Edn 12/15)	Official-Sensitive Security Requirements Note 1: Such DEFCON shall be read in conjunction with Clause 58 (<i>Security Aspects</i>) of the Special Conditions.
DEFCON 661A (Edn 06/21)	War Risk Indemnity - Alternative Version
DEFCON 670 (Edn 02/17)	Tax Compliance
DEFCON 681 (Edn 06/02)	Decoupling Clause – Subcontracting With the Crown
DEFCON 687A (Edn 06/21)	Provision of a Shared Data Environment Service
DEFCON 687B (Edn 06/21)	Shared Data Environment System Transfer Arrangements
DEFCON 691 (Edn 03/15)	Timber and Wood-Containing Products Supplied under the Contract
DEFCON 694 (Edn 07/21)	Accounting For Property of the Authority Note 1: The Sub-Contractors listed below have been granted self-accounting status in accordance with DEF STAN 05-99, and are authorised to handle and account for all Government Furnished Assets issued to them under this Contract: Atlas Elektronik Ltd. of Meadows Road, Queensway Meadows, Newport, South Wales NP19 4SS; A B Precision (Poole) Ltd. of 1 Fleets Lane, Poole, Dorset BH15 3BZ;

	<p>Systems Engineering and Assessment Ltd. of Riverside Road, Barnstaple, Devon EX3 1YL;</p> <p>McTaggart Scott, Hunter Avenue, Midlothian, Scotland EH20 9SP; and</p> <p>DSG Electronics and Components, Welsh Road, Sealand, Deeside, Flintshire CH5 2LS.</p>
DEFCON 697 (Edn 11/22)	Contractors on Deployed Operations
DEFCON 800 (Edn 12/14)	Qualifying Defence Contract (QDC)
DEFCON 801 (Edn 12/14)	Amendments to Qualifying Defence Contracts – Consolidated Version
DEFCON 802 (Edn 12/14)	QDC: Open Book on sub-contracts that are not Qualifying Sub-contracts
DEFCON 804 (Edn 03/15)	QDC: Confidentiality of Single Source Contract Regulations Information
DEFCON 812 (Edn 04/15)	Single Source Open Book
DEFCON 814 (Edn 02/19)	Single Source Confidentiality of Open Book and Reporting Information

2.2 DEFFORMs

The following DEFFORMs shall apply to this Contract (subject to the notes specified below):

DEFFORM 68 (Edn 09/21)	Hazardous Articles, Materials or Substances Statement By The Contractor
DEFFORM 96 (Edn 02/16)	Coding Sheet For Procurement Documentation
DEFFORM 111 (Edn 07/21)	Appendix - Addresses and Other Information
DEFFORM 129A (Edn 02/16)	Application for Packaging Designs and Authorisation for Package Design Work
DEFFORM 129B (Edn 02/22)	Military Packaging Feedback Report
DEFFORM 129J (Edn 09/17)	The Use of the Electronic Business Delivery Form
DEFFORM 177 (Edn 06/21)	Design Rights and Patents (Sub-Contractors) Contract
DEFFORM 315 (Edn 12/19)	Contract Data Requirement

	Note 1: DEFFORM 315 – The Contractor is to maintain a list of all PDS activities and Intellectual Property deliverables in the format of DEFFORM 315. The details for each entry are to be agreed with the Authority's Project Manager within the M-SET Project Team. The agreement of the IP deliverable(s) shall be at the commencement of each task. The Contractor shall provide a summary list of all Intellectual Property deliverables to the Authority annually, 2 weeks before the Annual Project Review Meeting.
DEFFORM 316 (Edn 05/98)	Government Furnished Information
DEFFORM 532 (Edn 10/19)	Personal Data Particulars
DEFFORM 539A (Edn 01/22)	Tenderer's Commercially Sensitive Information Form
DEFFORM 687C (Edn12/21)	Electronic Information Sharing Agreement (EISA)
DEFFORM 702 (Edn 08/07)	Employee's Acknowledgement to Employer of Obligations Relating to Confidentiality

3 Definitions and interpretation

- 3.1 In addition to the terms defined in DEFCON 501 (*Definitions and Interpretation*) and other General Conditions the following words and expressions shall apply to this Contract unless the context requires otherwise. In the event of any inconsistency between (i) DEFCON 501 (*Definitions and Interpretation*) and any other General Condition and (ii) this Clause 3.1, this Clause 3.1 shall take precedence:

Additional Service: the supply of goods or performance of services relating to any item(s) of Authority Equipment that is requested by the Authority pursuant to Clause 9 (*Additional Services and Change Governance*) where the provision and supply of such goods and/or services is:

- (a) either not being expressly identified in, or expressly excluded from the scope of, Annexes A (*Statement of Requirements*) and Annex B (*Performance Measurement, Monitoring and Reporting*); and
- (b) not ancillary to the full and proper discharge of the Contractor's obligations provided in this Contract, including Annexes A (*Statement of Requirements*) and Annex B (*Performance Measurement, Monitoring and Reporting*), in relation to Authority Equipment availability.

Additional Work Limit has the meaning given to it in Clause 11.2 (*Additional Work Limit*);

Affiliate means in relation to any person, any Holding Company or Subsidiary of that person or any subsidiary of such holding company and **Holding Company** and **Subsidiary** shall have the meaning given to them in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded.

Aggregate OD Liability Limit means in aggregate, [Information Redacted].

Allowable Costs means the costs determined as allowable costs in accordance with Section 20(2) of the Defence Reform Act 2014.

Amendment means a change to any provision of this Contract made in accordance with DEFCON 503 (Formal Amendments to Contract).

Annual Project Review Meeting or APRM means a meeting held or to be held by the Parties during the Contract Term to review the content that has been delivered as part of the annual project report in accordance with Annex E (*Deliverable Documentation*).

Asset has the meaning given in paragraph 1 of Annex S (*Exit Management*).

Asset Management Plan has the meaning given at Annex E (*Deliverable Documentation*).

Authority Equipment means the equipment identified in Annex A (*Statement of Requirements*) or any item of such equipment.

Authority Related Party means an officer, agent or employee of the Authority or a member of the armed forces in each case acting in the course of his office or employment but excluding in each case the Contractor and any and all Contractor Related Parties.

Authority's Commercial Branch means the body so designated in Box 1 of the DEFFORM 111 in the Contract.

Authority's Project Manager means or the **Project Manager**: the Authority's nominated overseeing officer (as detailed in Box 2 of DEFFORM 111).

Authority's Representative means the person duly authorised by the Authority to act for any purpose under any provision of the Contract or in any subsequent notice to act for any such purpose.

Balanced Scorecard (BSC) means a tool for illustrating, exploring and recording options, alternatives and potential outcomes to support the decision-making process.

Beyond Economical Repair means where the cost of repair is deemed to be uneconomical when compared to the value of the new equivalent item.

Base Inventory Management System or BIMS means the prevailing base inventory management system operated by the Authority.

Business Day has the meaning given to **business day** in DEFCON 501 (Edn 10/21).

Business Tenancy Agreement means:

- (a) each or any of the tenancy agreements attached to this Contract at Annex R (*Business Tenancy Agreements*) (as updated from time to time) or
- (b) any other business tenancy agreement or other property arrangement that the Contractor is required to enter into on or after the Effective Date in order to deliver the Services under this Agreement.

Certificate of Conformity means any certificate of conformity required to be supplied by the Contractor to the Authority in accordance with DEFCON 627 (Edn 11/21).

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

- (a) any Law comes into effect or is repealed (without re-enactment or consolidation) or is varied or amended, including by way of any applicable judgment of a relevant court of law which changes a binding precedent; or
- (b) the Contractor becomes obliged to comply pursuant to Clause 8.1.2 (*Contractor's General Core Obligations*) with any adoption, modification, issuance, consolidation, re-enactment, amendment, supplement or replacement of any Standards or Regulation (including the SSCR); or
- (c) any change to any Necessary Consent under Clause 8.4 (*Necessary Consents*); or
- (d) any change to Data Protection Legislation; or
- (e) any change to rules, regulations and requirements at Government Establishments (as referred to in clause 10 of DEFCON 76).

Change of Control has the meaning given in Clause 54 (*Change of Control*).

Codes means the codes specified in Annex D (*Codes and Standards*) as updated from time to time in accordance with DEFCON 503 (Edn 06/22) or DEFCON 620 (Edn 06/22) together with any other codes with which the Contractor is required under the terms of this Contract to comply, including any additional code(s) specified in a TAF under Clause 9 (*Additional Services and Change Governance*) (the application of such additional code(s) being limited to the TAF concerned).

Comparable Supply means the supply of services to another customer of the Contractor that are the same or similar to any of the Services.

Comprehensive RNSTS Inventory System Project or **CRISP** means the Authority's inventory management system.

Concession has the meaning given in DEF STAN 05-61 Part 1 Iss 4 - Quality Assurance Procedural Requirements – Concessions (as updated from time to time).

Conditions Precedent means the conditions set out in Clause 5.1 of this Agreement.

Continuous Engineering Support or **CES** means such engineering planning and support that is provided continuously irrespective of whether in Fleet or Non Fleet Time as is required to maintain the availability of the equipment comprised in UAT, Sonar 2087, Sonar 2093 and Sonar 2193 as defined in Annex A (*Schedule of Requirements*) and as is measured by CES1 KPI as set out in Annex B (*Performance Measurement, Monitoring and Reporting*) save to the extent that CES for the exclusive purposes of equipment comprised in UAT shall not be construed to include the period commencing upon the Non Fleet Date and ending on the date of successful completion of the HAT.

Contract Change Procedure means the procedure set out in DEFCON 620 (Edn 06/22).

Contract Month means any calendar month during the Contract Term, provided that:

- (a) the first Contract Month shall commence on the [Effective Date] and end at the end of the calendar month in which the Effective Date falls; and
- (b) the last Contract Month shall end on the [Expiry date or the Termination Date], if sooner.

Contract No. MCS/1017 means a contract entered into between the Parties relating to Sonar 2093 (as defined in Annex A (*Statement of Requirements*)).

Contract No. MCS/3006 means a contract entered into between the Parties relating to MEWSS Block 1 (as defined in Annex A (*Statement of Requirements*)).

Contract Payment Plan means the contract payment plan annexed to this Contract at Annex G (*Contract Payment Plan*).

Contract Price means the aggregate of the Services Payments payable under this Agreement subject to any:

- (a) Contract Price Adjustment Amounts; and
- (b) statutory final price adjustment as may be required under Section 21 of the Defence Reform Act 2014 and Regulations 16 and 17 of the Single Source Contract Regulations 2014 (SI 3337);

Contract Price Adjustment Amounts has the meaning given to that term in Clause 12.1.3;

Contract Term means the period commencing on the Effective Date and terminating on the earlier of the Termination Date and the Expiry Date.

Contract Year means:

- (a) each 12 (twelve) months beginning on 1 January and ending on 31 December during the Contract Term (each a **Whole CY**);
- (b) the period from the Effective Date until the start of the first Whole CY; and
- (c) the period from the end of the last Whole CY until the end of the Contract Term.

Contract Year 1 is the first Contract Year, and reference to each Contract Year onwards shall be construed accordingly;

Contract Year Contract Price means, in respect of a Contract Year, the aggregate of the Services Payments, net of any Contract Price Adjustment Amounts, in respect of each Contract Month during that Contract Year;

Contracting Authority has the meaning given to **contracting authority** in the Public Contracts Regulations 2015 (SI 2015/No.102).

Contractor Change Proposal has the meaning given in DEFCON 620 (Edn 06/22).

Contractor Commercially Sensitive Information has the meaning given in DEFCON 539 (Edn 01/22).

Contractor Default means

- (a) **where the Contractor commits one of the following:**
 - (i) **a failure to pay any sum greater than [Information Redacted] which is due and payable to the Authority under this Contract (being a sum which is not in Dispute) and such failure continues for thirty (30) Business Days after service of a formal written demand by the Authority stating that the sum is unpaid; or**
 - (ii) **any other material breach of its obligations under this Contract, which materially adversely affects the provision of the Services;**
- (b) **a Persistent Breach occurs;**
- (c) **where the Contractor has breach any representation, warranty or undertaking under Clause 6.2.1 (a), (b), (d), (f), (g), (h), or (j) (*Warranties and Undertakings*) and such a breach materially adversely affects the Contractor's ability to perform its obligations under this Contract;**
- (d) **the occurrence of an event or circumstance entitling the Authority to terminate this Contract in accordance with Clause 54.9 (*Change of Control*) or the Contractor has failed to comply with its obligations under the National Security and Investment Act 2021;**
- (e) **if any of the following occurs:**
 - (i) **a breach or breaches by the Parent of any of its payment or performance obligations under the Parent Company Guarantee that is not rectified within ten (10) Business Days of the date the Authority demanded payment or performance under the Parent Company Guarantee, provided formal written demand for such payment has previously been made by the Authority on the Contractor after the due date for payment or performance under this Contract (and which payment is not the subject of a bona fide dispute) and the Contractor has failed to pay the amount so demanded in full within 20 Business Days of the date that the Authority demanded payment or performance; or**
 - (ii) **the Parent Company Guarantee becomes void or unenforceable and the Contractor fails to procure in accordance with Clause 24.3 a new Parent Company Guarantee in the same form as that in Annex T (*Parent Company Guarantee*), or as otherwise agreed by the Authority;**
- (f) **an Insolvency Event:**
 - (i) **in respect of the Contractor occurs and the Guarantor fails to comply with its obligations under the Parent Company Guarantee; or**

- (ii) **in respect of the Guarantor occurs and a replacement Parent Company Guarantee on like terms is not procured within 10 (ten) Business Days after (and including) the date of such occurrence from a substitute guarantor of (as a minimum) similar financial standing to the Initial Guarantor as at the date on which the Parent Company Guarantee is first procured in accordance with Clause 23 (Parent Company Guarantee);**
- (g) **the occurrence of an event identified in clause 12 of DEFCON 68 (Edn 10/22)** entitling the Authority to terminate this Contract (whether in whole or in part);
- (h) **the occurrence of an event identified in clause 18 of DEFCON 528 (Edn 07/21)** entitling the Authority to terminate this Contract (whether in whole or in part);
- (i) **the Contractor is in breach of its obligations under DEFCON 532B (Edn 09/21),**
- (j) **from the beginning of the eighteenth (18th) month of the Contract, where** any KPI continues to display a BRONZE for 5 (five) consecutive months or where four (4) or more KPIs display BRONZE in a single month **(ignoring for the purposes of this limb any BRONZE rating(s) arising directly and solely from the occurrence of a Relief Event or (where Clause 18.7.2(a) applies) a Force Majeure Event);**
- (k) a Cyber Termination Event occurs;
- (l) where the Contractor commits a breach of any of its obligations under Clause 52 (Assignment) and such breach materially adversely affects the Contractor's ability to perform its obligations under the Contract;
- (m) any of the events in (*Termination Rights*) of Annex H (*Financial Distress*) occurs.

Contractor Deliverables means all works, goods and/or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under this Contract, including those specified in Annex A (*Statement of Requirements*) or Annex B (*Performance Measurement, Monitoring and Reporting*), any Deliverable Documentation, any rectification or repair of Operational Damage in accordance with Clause 8, any Optional Services (once such service has been taken up in accordance with Clause 8), any Additional Service (once such service has been approved for delivery in accordance with Clause 9) and any new service proposed and approved as a Change in accordance with DEFCON 620 (Edn 06/22).

Contractor Equipment means any equipment owned or leased by the Contractor or any Sub-Contractor and used (whether exclusively or non-exclusively) from time to time in the provision of the Services, any such equipment excluding any Government Furnished Asset(s) or any asset or assets supplied under DEFCON 23 (Edn. 06/21).

Contractor OD Notification has the meaning given in Clause 8 (*Contractor's Obligations*).

Contractor Related Party means:

- (a) any Affiliate of the Contractor;
- (b) any Sub-Contractor;

- (c) an officer, employee, consultant, servant or agent of (i) the Contractor; (ii) any Affiliate of the Contractor or (iii) any Sub-Contractor.

Contractor Software means Software in the IPR in which is owned by the Contractor or any member of the Contractor's Group.

Contractor's Group means the Contractor and its Affiliates from time to time.

Contractor's Representative means the person duly authorised by the Contractor to act on its behalf for any purpose under any provision of the Contract or in any subsequent notice to act for any such purpose provided that such person so authorised to act in this capacity is notified to the Authority in writing.

Control has the meaning given in Clause 54 (*Change of Control*).

Control Measures means the mitigations applied to particular hazards as specified in any equipment safety case (as amended from time to time) for any Authority Equipment, including (amongst other things) any specified mandatory maintenance.

Core Price has the meaning given in in Clause 11.4.

Core Price Column means the column headed "*Total Core Activities (Excluding LOL) Value (£)*" in Annex G.

Core Price CPR_(ex-IA) has the meaning given to it in Part 1 (*Contract Profit Rates*) of Annex M (*Pricing Materials*).

CP&F has the meaning given in DEFCON 522 (Edn 11/21).

Cyber Termination Event means any event or circumstance identified in DEFCON 658 (Edn 10/22), the occurrence of which entitles the Authority to terminate this Contract whether in whole or in part.

Data Protection Legislation has the meaning given in DEFCON 532B (09/21).

Defect means any defect or deficiency in any Contractor Deliverable:

- (a) which prevents the relevant asset or item of equipment from being provided in accordance with the provisions of this Contract or renders it non-compliant with any of those provisions; and/or
- (b) renders it to be in breach of any applicable Law;

Defence Equipment and Support means or **DE&S**: a bespoke trading entity which is part of the Ministry of Defence with responsibility for managing complex projects to buy and support all the equipment and services that the Royal Navy, British Army and Royal Air Force need to operate effectively and references within this Contract to **Defence Equipment and Support** or **DE&S** are interchangeable with the **Authority**.

Deliverable Documentation means any document(s), report(s), plan(s) and/or management information identified in Annex E (*Deliverable Documentation*) or otherwise required under Clause

9 (*Additional Services and Change Governance*) which the Contractor is required to provide under this Contract in accordance with Clause 10 (*Deliverable Documentation*).

Deliverable Quality Plan means the quality plan described in Clause 26 (*Quality Requirements*).

Delivered At Place means the Contractor's responsibility to bear all the costs associated with transportation of the goods to the Authority's consignment address (as specified by the Authority in accordance with the Contract).

Design Authority means the Contractor being wholly responsible for:

- (a) the efficient and proper functioning as required by this Contract of all Articles supplied or all Authority Equipment supported under it and for ensuring that any design is wholly complete, accurate and meets the Specifications; and
- (b) seeking agreement for any design made in the course of or resulting from work carried out by or on behalf of the Contractor under this Contract and ensuring that the overall design intent (including performance, functionality, operability and system openness) is maintained in accordance with the Specifications.

The foregoing responsibilities shall apply notwithstanding any official approval of, or expression of satisfaction with, any drawings, specifications, schedules or any other relevant technical, administrative documents or data by or on behalf of the Authority.

Dispute Resolution Procedure means the dispute resolution procedure set out in Clause 46 (*Dispute Resolution*) and DEFCON 530 (Edn 12/14).

Effective Date means 1st January 2024.

Environment means all or any of the media of air, water, land and all or any living organisms (including man) or systems supported by any such media.

Environmental Law means all Laws relating to Environmental Matters (but excluding all such Laws that relate to the health and safety of workers in the workplace) which may from time to time be in force.

Environmental Matter means all or any matters relating to:

- (a) compliance with Environmental Law
- (b) pollution or contamination of the Environment;
- (c) the presence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of Hazardous Substances or waste;
- (d) the storage or use of Hazardous Substances and waste, and any exposure of any person to Hazardous Substances or waste;
- (e) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the Environment;

- (f) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the Environment or any part of it;
- (g) climate change; and/or
- (h) energy efficiency.

Environmental Permits means any Necessary Consent issued or required under Environmental Law.

Electronic Component Management Plan or **ECMP** means the electronic component management plan which defines the Contractor's practices for electronic component selection and procurement.

Ex-works means the Contractor's responsibility:

- (a) to make the goods available at his premises at the time specified in the Contract (including any application or notice under DEFCON 621A (Edn 12/21) as may be agreed by the Authority); and
- (b) for packing and loading such goods onto road or rail vehicles.

Exit Management Plan has the meaning given in Annex S (*Exit Management*).

Expected Work Locations means (for the purposes of DEFCON 697 (Edn 11/22) are:

- (a) **Information Redacted;**
- (b) **Information Redacted;**
- (c) **Information Redacted;**
- (d) **Information Redacted;**
- (e) **Information Redacted;**
- (f) **Information Redacted;**
- (g) **Information Redacted;**
- (h) **Information Redacted;**
- (i) **Information Redacted;**
- (j) **Information Redacted;**

and/or such other additional or substitute expected work locations as may be nominated from time to time by the Authority in writing to the Contractor and as agreed by the Parties (acting reasonably).

Expiry Date means 23:59 (London time) on 31st December 2038.

Final Warning Notice has the meaning given in Clause 19.5.2 (**Contract Termination (Other than a Force Majeure based Termination)**).

Firm Price means a price for providing the Services and/or the Contractor Deliverables, or part thereof, which is determined using the firm pricing method provided for under Regulation 10(4) of the SSCR and is therefore not subject to variation (save for any statutory final price adjustment as may be required under Section 21 of the Defence Reform Act 2014 and Regulations 16 and 17 of the Single Source Contract Regulations 2014 (SI 3337)).

Fleet Date means the date on which Scheduling Authority transfers from Defence Equipment and Support (DE&S) to Navy Command Head Quarters (NCHQ) (as notified by the Authority to the Contractor).

Fleet Non-Operational Date means the date on which NCHQ no longer intends to operate the platform.

Fleet Time means the periods of Whole Ship Life under NCHQ Scheduling Authority which starts on the Fleet Date or In Service Date and ends on the Non-Fleet Date or Fleet Non-Operational Date.

FM Affected Services means such Services affected by the Force Majeure Event in accordance with Clause 18 (*Force Majeure Events*).

FM Period has the meaning given in Clause 18.7.1 (*Force Majeure Events*).

Force Majeure Event means any event (other than a Change in Law) outside the reasonable control of the either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action, including but not limited to:

- (a) **war, armed conflict, civil commotion or terrorism; or**
- (b) **any strike occurring within the United Kingdom: (i) which has been called by the national or other principal executive committee of an independent trade union (within the meaning of Section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992) which is a recognised trade union within the meaning of the Trade Union and Labour Relations Act (Consolidation) Act 1992; (ii) which has been endorsed by a properly conducted ballot of members affected; and (iii) and which all or selected members of such a union, whether or not employed by the Contractor or any of its Sub-Contractors, have been invited by its national or other principal executive committee to withdraw their labour as part of a national campaign of industrial action, (a National Strike); or**
- (c) **acts of nature including but not limited to flood, storm, earthquake, or other natural disaster but for the avoidance of doubt excluding pandemics or infectious disease; or**
- (d) **pressure waves caused by aircraft or such devices or sonic booms; or**
- (e) **any change (that was not reasonably foreseeable at or prior to the Effective Date or to (1) foreign government policy or (2) United Kingdom government policy, the impact of**

either or both of which is to proscribe trade between the United Kingdom and any other nation) where:

- (i) such change prohibits the trade (in either or both) of goods and services necessarily directly relied upon by the Contractor for its performance of the Contract;
 - (ii) the Contractor performs work directly in connection with this Contract in the other nation; and
 - (iii) to the extent that either (i) such change is not otherwise provided for under Clause 39 (*Change in Law*) or (ii) a Change (as defined in clause 1 of DEFCON 620 (Edn 06/22) is not introduced and implemented in accordance with the provisions of such DEFCON); or
- (f) a fire at any of the Authority's or the Contractor's premises or any of those of any Sub-Contractor in each case used in connection with the performance of obligations provided in this Contract, except to the extent that:
- (i) (in relation to any relief claimed by the Contractor as an Affected Party (as defined immediately below) in respect of its obligations provided in this Contract any such event or occurrence was caused by the negligence or wilful misconduct of the Contractor or any of the Contractor Related Parties; and
 - (ii) (in relation to any relief claimed by the Authority as an Affected Party) in respect of its obligations provided in this Contract any such event or occurrence was caused by the negligence or wilful misconduct of the Authority or any of the Authority Related Parties; or
- (g) **the occurrence of any nuclear hazard or biohazard, except to the extent that:**
- (i) (in relation to any relief claimed by the Contractor as an Affected Party in respect of its obligations provided in this Contract) any such event or occurrence was caused by the negligence or wilful misconduct of the Contractor or any of the Contractor Related Parties; and
 - (ii) (in relation to any relief claimed by the Authority as an Affected Party) in respect of its obligations provided in this Contract any such event or occurrence was caused by the negligence or wilful misconduct of the Authority or any of the Authority Related Parties,

which causes either Party (the **Affected Party**) to be unable to comply with all or a material part of its obligations under this Contract.

General Conditions means the conditions identified in Clause 2.1.

Good Industry Practice means the exercise of such degree of skill, care, diligence, prudence, foresight and operating practice as would reasonably and ordinarily be expected from a skilled and experienced person:

- (a) seeking to comply with its contractual obligations;

- (b) seeking to comply with any duty of care that might reasonably apply to or is to be expected from that person complying with all applicable Law; and
- (c) being engaged in the same type of undertaking as the Contractor or any Sub-Contractor;

Good Working Order means the Authority Equipment operates in accordance with the capability statements specified at Annex A1 of Annex A (*Statement of Requirements*).

Government Establishment means:

- (a) any premises owned or operated by H.M. Government,
- (b) any of His Majesty's ships or vessels and service stations operated by H.M. Government; and
- (c) any operational unit operated by H.M. Government.

Government Furnished Assets or **GFA** has the meaning given in DEFCON 501 (Edn. 10/21).

Government Furnished Equipment or **GFE** means Issued Property (as defined in DEFCON 501 (Edn. 10/21)).

Guarantor means any person (including the Initial Guarantor) providing the Parent Company Guarantee pursuant to the terms of this Contract.

Handbooks means information (including for example, drawings, manuals, instructions, specifications and notes of pre-tender clarification meetings, in whatever form or medium), patterns and samples.

Harbour Acceptance Trials or **HATs** means events in respect of any platform that confirm correct functioning of systems conducted whilst such platform is in harbour.

Hazardous Substances means any natural or artificial substance (whether in solid or liquid form or in the form of a gas, vapour or ionising radiation and whether alone or in combination or in reaction with any other substance) capable of causing harm to man or any other living organism supported by the Environment or damaging the Environment or public health or welfare, including any controlled special hazardous toxic or dangerous waste or radioactive material.

Health and Safety Policy means the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Contractor in respect of a Government Establishment on or before the Effective Date and as subsequently provided to the Contractor from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

Historic Contamination means the presence of Hazardous Substances at, on, in or under any Government Establish on or before the Commencement Date.

Incentive Adjustment means a contract profit rate incentive adjustment as provided for under "Step 5" in Regulation 11 (*Steps in determining contract profit rate*) of the SSCR.

Information has the meaning given to it in DEFCON 531.

Initial Guarantor means the person who first executed and provided the Parent Company Guarantee procured by the Contractor in accordance with Clause 23 (*Parent Company Guarantee*).

In Service Date means the date the platform is accepted into service.

Insolvency Event (Guarantor) means each or any of the following events:

- (a) the Guarantor stops or suspends payment of its debts or is unable or admits inability to pay its debts as they fall due or commences negotiations with one or more of its creditors with a view to the general re-adjustment or re-scheduling of all or part of its indebtedness or propose(s) any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement pursuant to the provisions of the Insolvency Act 1986) being entered into by or in relation to it in circumstances where such arrangement or composition is likely materially to affect its ability to perform its obligations under the Parent Company Guarantee;
- (b) a receiver, administrative receiver, liquidator, trustee or other incumbrancer takes possession of or is appointed over the whole or any material part of the Guarantor's assets or any distress, execution or other process being levied or enforced upon the whole or any material part of its assets, undertaking, rights or revenues (and not being paid or discharged within 14 (fourteen) days or such longer period as is necessary under such distress execution or other process or if it is contesting the same and has set aside an amount which will satisfy such distress);
- (c) the Guarantee ceases or threatens to cease to carry on business or the Guarantor transfers or disposes of its interest in all or a substantial part of its assets (other than for the purpose of a bona fide internal reorganisation or other restructuring);
- (d) a petition is presented (and not being discharged within 28 (twenty-eight) days) or resolution is passed or order is made for the administration or the winding up, or dissolution of the Guarantor (other than for the purpose of a bona fide internal reorganisation or amalgamation or other restructuring); or
- (e) the Guarantor shall suffer any event analogous to any of limbs (a) to (d) (inclusive) in any other jurisdiction in which it is resident;

Intellectual Property has the meaning given in DEFCON 15 (Edn 06/21) and DEFCON 16 (Edn 10/04) and **IP** shall have the same meaning.

IP DEFCONs means each of the DEFCONs specified in Annex N (*IPR Conditions under pre-existing contracts*) but does **not** include the narrative conditions contained therein.

Issued Property has the meaning given in DEFCON 501 (Edn 10/21).

Key Sub-Contract means each Sub-Contract with a Key Sub-Contractor.

Key Sub-Contractor means any Sub-Contractor:

- (a) listed in Annex AC (*Initial Key Sub-Contractors*)

- (b) which, in the opinion of the Authority (having given due consideration to any submissions by the Contractor and acting reasonably) performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
- (c) with a Sub-Contract with a contract value which at the time of appointments exceeds (or would exceed if appointed) £25m in any year forecast to be payable under this Agreement.

Key Performance Indicators or KPIs means the key performance indicators specified in Annex B (*Performance Measurement, Monitoring and Reporting*) and **Key Performance Indicator or KPI** shall mean any one of them.

Labour Cost VOPA has the meaning given in Clause 11.5.3(b).

Labour Price Column means the column headed "*Labour Core Activities (Excluding LOL) Value (£)*" in Annex G.

Law means any applicable law, enactment, statute, proclamation, by-law, directive, decision, notice, court decree or judgment, regulation European Union legislation, authorisation, rule, order, rule of court or delegated or subordinate legislation including directions, requirements or guidance issued pursuant to any legislation (provided such directions, requirements or guidance are derived from a valid legal authority, including any nuclear regulator or Regulatory Body) and any Government relevant naval base commander or other Authority (in its statutory capacity and not as contractual counterparty) documents or publications having the force of law in each case in force in the United Kingdom at any time or from time to time.

Losses means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands.

M-SET IP DEFCONs means the following General Conditions (inclusive of the notes thereto):

- (a) DEFCON 14 (Edn 11/22);
- (b) DEFCON 15 (Edn 06/21);
- (c) DEFCON 16 (Edn 06/21);
- (d) DEFCON 19 (Edn 01/76);
- (e) DEFCON 21 (Edn 06/21);
- (f) DEFCON 90 (Edn 06/21);
- (g) DEFCON 91 (Edn 06/21);
- (h) DEFCON 126 (Edn 06/21); and
- (i) DEFCON 632 (Edn 11/21).

Management Information means all administrative information, in whatever format, used by the Contractor specifically for the purposes of managing and administering the Contract (including a list of all licences, supply agreements and maintenance agreements with third parties for Third

Party Software including full copies of the terms of the software license agreements) (but excluding Technical Information) and which is agreed as being necessary for the Authority or any New Provider to manage any alternative arrangement for delivery of the remaining contracted capability and any outstanding Task(s).

Materials Cost VOPA has the meaning given in Clause 11.5.3(a).

Material Price Column means the column headed "*Material Core Activities (Excluding LOL) Value (£)*" in Annex G.

MOD Form 680 Process means the security process used by the United Kingdom Government to consider applications for the release by industry of equipment or information with a classification of OFFICIAL-SENSITIVE or above, including for use in export promotion, as is further defined at Annex V (*Security Aspects Letter*).

Month has the meaning given in DEFCON 501 (Edn.10/21) and **monthly** shall be construed accordingly.

Monthly Report has the meaning as described in Annex F (Governance).

Navy Command Head Quarters or NCHQ means the headquarters body of the Royal Navy.

Necessary Consents means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the purposes of the Contractor's obligations under this Contract, whether required in order to comply with Law or as a result of the rights of any third party.

New Provider has the meaning given in Annex AB (*Transfer Regulations*).

NSIA means the **National Security and Investment Act 2021**.

Non-Fleet Date means the date on which Scheduling Authority transfers from NCHQ to DE&S.

Non-Fleet Time means the periods of Whole Ship Life under DE&S Scheduling Authority, which starts on the Non-Fleet Date and ends on the Fleet Date or In-Service Date.

Non-Instructed Operational Damage Incident has the meaning given in Clause 8.2.9 (*Contractor's Obligations*).

Notifying Party has the meaning given in Clause 18 (*Force Majeure Events*).

Obsolescence Equipment Plan has the meaning given in Clause 27 (*Obsolescence Management*) provided in the form set out in Annex E (*Deliverable Documentation*).

Obsolescence Management Services means any resolution of obsolescence in connection with the Authority Equipment (or any part or component of such equipment) all in accordance with MSET Equipment Support Strategy Paper, Reference **[Information Redacted]**, dated 8th August 2023.

OD Rectification Price has the meaning given in Clause 8.2.3 (*Contractor's Obligations*).

Operational Availability means the probability that an equipment system at any instant in the required operating time will operate satisfactorily under stated conditions where the time considered includes operating, corrective and preventative maintenance, administrative delay time and logistic delay.

Operational Damage means any damage to any equipment identified in Annex A (*Statement of Requirements*) occurring or which has occurred whilst in the custody and/or control of the Authority and/or any Authority Related Party other than:

- (a) where and to the extent such damage constitutes reasonable fair wear and tear; and
- (b) **to the extent arising out of or in connection with:**
 - (i) **any act, omission, neglect and/or default of the Contractor and/or any Contractor Related Party;**
 - (ii) **any Defect in any Contractor Deliverable; or**
 - (iii) **any article or deliverable made to the Authority by the Contractor or any Contractor Related Party under any other contract or arrangement.**

Subject to limbs (a) and (b) immediately above, Operational Damage may include:

- (a) damage, or loss, to towed arrays caused by mishandling, operator error, poor ship handling;
- (b) damage, or loss, to outboard equipment caused by a tug or other third party;
- (c) **damage, or loss, caused by severe weather except where the Authority Equipment could reasonably be expected, or have been designed, to cope with such extremes;**
- (d) **damage, or loss, caused by navigational errors, such as striking the seabed or running aground;**
- (e) **damage, or loss, due to an operational decision by the command or as a result of operations; and**
- (f) **damage, or loss, due to an act of war.**

Operational Defect or OPDEF means any defect arising in relation to any platform affecting such platform's operational capability, seagoing effectiveness and/or safety.

OPDEF Data Management System or ODMS means a single comprehensive management tool for OPDEFs and related signal data.

Parent Company Guarantee means a guarantee issued by the Guarantor in the form set out in Annex T (*Parent Company Guarantee*).

Payment Month means:

- (a) each Contract Month except the 1st (first) Contract Month; and

(b) each of the 3 (three) calendar months to commence after the final Contract Month.

Performance Element Amount (PEA) means each or any amount identified as the **Performance Element Amount** in the Payment Plan.

Performance Indicators or **PIs** means the performance indicators specified in Annex B (*Performance Measurement, Monitoring and Reporting*) and **Performance Indicator** or **PI** shall mean any one of them.

Performance Levels means the KPIs against which the Contractor shall deliver the Services, such criteria being specified in Annex B (*Performance Measurement, Monitoring and Reporting*).

Persistent Breach has the meaning given in Clause 19.5.4 (***Contract Termination (Other than a Force Majeure based Termination)***).

Post Design Services means or **PDS**: work involving, amongst other things, the modification, adaption or change of the design, operation or performance of equipment or systems authorised by the Authority.

Prescribed Rate has the meaning given in Clause 14.1.1 (*Payments – General*).

Productivity Adjustment has the meaning given in Clause 11.5.3(b)(vi).

Profit Withholding means a **Profit Withholding 3** and a **Profit Withholding 5**.

Profit Withholding 3 has the meaning given to it in Clause 13.3.3.

Profit Withholding 5 has the meaning given to it in Clause 13.4.1.

Prohibited Act has the meaning given to it in DEFCON 520 (**Edn 08/21**) (***Corrupt Gifts and Payments of Commission***).

Project Officer or **PQAO** has the meaning given in Clause 26 (*Quality Requirements*).

Project Review Meeting means the project review meeting specified in Annex A (*Statement of Requirements*) or operating in connection with DEFCON 642 (Edn 07/21).

Qualifying Change in Law means any Change in Law the effect of which is to discriminate directly against the Contractor, as a defence contractor, providing the Services and which was not foreseeable prior to the Effective Date. A change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances.

Quality Assurance means the activities identified in Clause 26 (*Quality Requirements*) and implemented in a quality system so that quality requirements for a product or service will be fulfilled.

Quality Assurance Authority or **QAA** has the meaning given in Clause 26 (*Quality Requirements*).

Quality Assurance Representative or **QAR** has the meaning given in Clause 26 (*Quality Requirements*).

Quarter means each 3 (three) calendar month period ending on the final day of March, June, September and December each year.

Questionnaire on the Method of Allocation of Costs means or **QMAC**: at any time during the Contract Term the then prevailing document through which agreement between the Parties is reached concerning the Contractor's system of allocating costs.

RE Affected Services means such Services affected by the Relief Event in accordance with Clause 17 (*Relief Events*).

Reference Set(s) means systems that are held in support of operational systems to assist in support, training and integration activities.

Regulation means:

- (a) all applicable Law; and
- (b) each other order, regulation or other instrument or code of practice that applies or relates to the Services (including any Authority policy or guidance):
 - (i) having the force of Law; and/or
 - (ii) expressly referenced in this Contract.

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence parties to and/or the matters dealt with in this Contract or any other affairs of the Authority and **Regulatory Body** shall be construed accordingly.

Relevant Completion Date has the meaning given in Clause 8.2.3(b) (*Contractor's Obligations*).

Relevant Index has the meaning given to it in Clause 11.5.3(b)(vii) (and **Relevant Indices** shall be construed accordingly).

Relevant Monthly Period has the meaning given in [Clause 11 (*Performance Levels and Performance Element Amounts*)].

Relevant Requirements means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Relevant Task has the meaning given in Clause 8.2.3.

Relief Event means any of the following other than any discriminatory legislative change pursuant to Clause 40:

- (a) the occurrence of any Non-Instructed Operational Damage Incident;
- (b) the occurrence of any negligent act of the Authority described in Clause 16.5.3 (*Step-In Rights*); and

- (c) a breach by the Authority of any of its obligations provided in this Contract save to the extent arising out of or in connection with any act, omission, neglect and/or default committed or made by the Contractor and/or any Contractor Related Party or Contractor Related Parties.

Remediation means preventing, limiting, removing, remedying, cleaning up, abating, containing or ameliorating the presence or effect of Hazardous Substances at, on, in under or introduced to or originated from Government Establishment (as applicable) and **Remediate** and **Remediating** shall be interpreted accordingly.

Representative means (in the case of the Authority) the Authority's Representative or (in the case of the Contractor) the Contractor's Representative.

Risk Register means a register of all project risks (including a description of the risk, risk type, likelihood or probability of occurrence, severity of the impact, mitigation, assigned owner, status and value) which shall be delivered in accordance with Clause 34 (*Risk Plan/Assessment*) and maintained in accordance with Annex A (*Statement of Requirements*).

Sanctions means an entity registered, domiciled or with business in any country included on the UK Sanctions List published and updated from time to time at: <https://www.gov.uk/government/publications/the-uk-sanctions-list>.

Scheduling Authority means the authority vested with responsibility for the planned programme for the platform.

Sea Acceptance Trials or **SATs** means trials to confirm the correct functioning of systems conducted whilst the platform is at sea.

SEMS means at any time during the Contract Term the Authority's then prevailing "Safety and Environmental Management Plan" at that time.

Serviceable Not New Standard means in respect of any item or asset that such item or asset shall be repaired or shall have been repaired to a fit for use standard.

Services means all services which the Contractor is required under this Contract to perform or to fulfil, including any service specified in Annex A (*Statement of Requirements*) or Annex B (*Performance Measurement, Monitoring and Reporting*) and which shall include Contractor Deliverables as required, any repair or rectification of Operational Damage in accordance with Clause 8 (Contractor Deliverables for the avoidance of doubt to be calculated on a case by case basis), any Additional Service (once such service has been approved for delivery in accordance with Clause 9) (Contractor Deliverables for the avoidance of doubt to be calculated on a case by case basis) and any new service proposed and approved as a Change (such Change to include Contractor Deliverables) in accordance with DEFCON 620 (Edn 06/22), and **Service** shall mean any one of them.

Services Payment has the meaning in respect of a Contract Month given to it in Clause 12.1.2 and **Services Payments** shall be construed accordingly.

Setting to Work means the process of ensuring a system is at the state required for operational use.

Single Source Advisory Team or **SSAT** means the Authority's internal subject matter expert for the Single Source Contract Regulations 2014 (SI 3337).

SSCR means the **Single Source Contract Regulations 2014 (as amended from time to time)**.

Single Source Regulations Office means or **SSRO**: the non-departmental public body established by the Defence Reform Act 2014 acting as the independent statutory regulator of single source for the UK Government, or any replacement body.

Software has the meaning given in DEFCON 91 (Edn 11/06).

Software Project Quality Plan or **SPQP** has the meaning given in AQAP 2210 Edn A ver2 (NATO Supplementary Software QA Requirements).

Source Material has the meaning given in DEFCON 91 (Edn 06/21).

Special Conditions means the terms of this Contract and the provisions of its Annexes other than (in each case) the General Conditions.

Specifications has the meaning given in DEFCON 503 (Edn 06/22) and the note thereto as each or any specification is updated from time to time in accordance with DEFCON 503 (Edn 06/22), together with any other specification specified in a TAF under Clause 9 (*Additional Services and Change Governance*) (the application of such additional specification(s) being limited to the TAF concerned).

Standards means the standards specified in Annex D (*Codes and Standards*) as updated from time to time in accordance with DEFCON 503 (Edn 06/22) or DEFCON 620 (Edn 06/22) together with any other standards with which the Contractor is required under the terms of this Contract to comply, including any additional standard(s) specified in a TAF under Clause 9 (*Additional Services and Change Governance*) (the application of such additional standard(s) being limited to the TAF concerned).

Statement of Requirement or **SOR** means the narrative description of work to be delivered by the Contractor under the Contract, detailed at Annex A (Statement of Requirements).

Step-in Notice has the meaning given in Clause 16.2.1 (*Step-In Rights*).

Step-Out has the meaning given in Clause 16.5.1 (*Step-In Rights*).

Sub-Contract means any sub-contract (of any tier) entered into or to be entered into or otherwise used in connection with this Contract, the Services and/or any of the Contractor Deliverables and **Sub-Contracting** shall be construed accordingly.

Sub-Contractor means any person (other than the Contractor) entering into a Sub-Contract.

Subsequent Monthly Period has the meaning given in Clause 11 (*Performance Levels and Performance Element Amounts*).

Sustainable Procurement means the process where organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis, including generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.

System means any of the systems identified in Annex A1 of Annex A (*Statement of Requirements*).

Task means an activity required by the Authority to be performed by the Contractor pursuant to Clause 9 (*Additional Services and Change Governance*) and which shall be an activity not covered within Annex B (*Statement of Requirements*) and which does not therefore form part of the Core Price.

Task's Firm Price means, in respect of a Task, the Firm Price attributable to or to be attributable to such Task.

TAF means a Task Approval Form.

TAF Cancellation Costs has the meaning given in Clause 9.1.12.

TAF Termination Costs means all reasonable costs, losses, damages and expenses suffered or incurred by the Authority as a result of rectifying or mitigating the effects of any breach identified in Clause 9.1.10(b), save to the extent that the same has already been recovered by the Authority pursuant to this Contract, and (where the Authority elects to re-procure the Additional Services or any part thereof) the transfer of the Additional Services or such part to one or more alternative suppliers, such reasonable costs, losses, damages and expenses,

including:

- (a) the Authority's legal and advisory fees, plus applicable court and filing fees and stamp duty;
- (b) travel and subsistence costs of Authority staff and advisors incurred in relation to such transfer;
- (c) staff transfer/relocation costs of the Authority together with any payments incurred in relation to any such transfer and/or relocation;
- (d) any increase in the costs of providing the relevant Additional Service(s) as delivered by any such alternative supplier compared with what the cost would have been under this Contract; and
- (e) any other reasonable identifiable incremental costs falling to the Authority, including any salary cost of Authority employees diverted from other projects and replaced on those projects by contracts or temporary staff;

TAF Withdrawal Costs has the meaning given in Clause 9.1.12.

Task Approval Form means a task approval form in the form set out in Annex L (*Task Approval Form (TAF)*).

Technical Information means:

- (a) all technical data, including:
 - (i) Contractor Software and Software developed under the Contract; and

- (ii) Software code in human readable form together with the required compiler(s), procedures, documentation and other information that has been generated or utilised as part of providing the Services and the provision and delivery of any Contractor Deliverable(s); and
- (b) information arising from predictive modelling including in connection with;
 - (i) support;
 - (ii) repair;
 - (iii) modification;
 - (iv) manufacture; and
 - (v) design services data,

and including that showing trends capability and resource consumption.

Termination Costs means all reasonable costs, losses, damages and expenses suffered or incurred by the Authority as a result of rectifying or mitigating the effects of any breach of this Contract by the Contractor or Default, save to the extent that the same has already been recovered by the Authority pursuant to this Contract, and (where the Authority elects to re-procure the Services or any part thereof) the transfer of the Services or such part to one or more New Providers, such reasonable costs, losses, damages and expenses,

including:

- (a) the Authority's legal and advisory fees, plus applicable court and filing fees and stamp duty;
- (b) travel and subsistence costs of Authority staff and advisors incurred in relation to such transfer;
- (c) staff transfer/relocation costs of the Authority together with any payments incurred in relation to any such transfer and/or relocation;
- (d) any increase in project costs as delivered by any New Provider compared with what the cost would have been under this Contract; and
- (e) any other reasonable identifiable incremental costs falling to the Authority, including any salary cost of Authority employees diverted from other projects and replaced on those projects by contracts or temporary staff;

Termination Date means the date prior to the Expiry Date on which this Contract terminates in accordance with any of its terms.

Termination Notice means a notice of termination issued in accordance with this Contract.

Termination Period has the meaning given in Annex S (*Exit Management*).

Third Party Software means **Software owned by a person other than the Authority, the Contractor or any member of the Contractor's Group.**

Variation of Price Adjustment has the meaning given in Clause 11.5.1.

Whole Ship Life means **the period of time the platform is in service commencing on and from the In-Service Date and ending on the** out of service date (as specified in Annex A (*Statement of Requirements*)).

3.2 Interpretation

3.2.1 In addition to the terms set out in paragraphs 3 to 6 (inclusive) of DEFCON 501 (Edn.10/21) and except where the context otherwise requires, in this Contract:

- (a) references to the Parties shall be to the Authority and the Contractor and a reference to a Party shall be to either the Authority or the Contractor (as applicable).
- (b) reference to any gender includes any other;
- (c) the singular includes the plural and vice versa;
- (d) **a reference** to any person, including a **Party**, includes that person's lawful successors in title and transferees (unless the transfer to the successor in title or transferee was in breach of this Contract), whether pursuant to contract, statute or otherwise;
- (e) a reference in this Contract to any Clause, paragraph, Appendix or Annex is, except where it is expressly stated to the contrary, a reference to such clause, paragraph, appendix or annex of this Contract;
- (f) references to any documents being **in the Agreed Form** shall mean such documents have been accepted by the Authority in conjunction with the Deliverable Documentation acceptance process;
- (g) a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees and references to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
- (h) the Contractor's performance of any obligation and/or the discharge of any liability under or in connection with any provision of this Contract shall be at no additional cost, charge and/or expense to the Authority and shall be deemed to be priced within the Core Price, where either (a) it is made clear (for emphasis only) in or in connection with such provision that such performance and/or discharge is to be at no additional cost, charge and/or expense to the Authority; or (b) no obligation or liability is expressly imposed on the Authority to pay any amount in addition to the Core Price in consideration for such performance and/or discharge;
- (i) words "other" and "otherwise" shall not be construed as being limited by any foregoing words where a wider construction is possible. Words preceding **include, includes,**

including and **included** shall be construed without limitation by the words which follow those words;

- (j) headings and the paragraphs under the heading "Background" are for ease of reference and information only and are to be ignored when interpreting this Contract; and
- (k) reference to a month is to a calendar month.

3.2.2 Any reference to any Law shall include a reference to the Law as:

- (a) such Law as from time to time amended, extended, consolidated or re-enacted;
- (b) such Law as supplemented or applied by or pursuant to any other Law before, on or after the Commencement Date;
- (c) any Law which re-enacts, restates or replaces (in each case with or without modification) that enactment;
- (d) any orders, regulations, codes of practice, instruments or other subordinate legislation made (whether before, on or after the date of this Contract) under the relevant Law.

3.2.3 Any reference in any DEFCON incorporated into this Contract or any other part of this Contract to **P2P** shall be construed as a reference to **CP&F**.

3.2.4 The General Conditions, Special Conditions, the Appendix and Annexes to this Contract form part of this Contract and shall be taken into account in the interpretation of this Contract.

3.2.5 Where this Contract defines a word or expression, related words and expressions have a consistent meaning.

3.2.6 Any decision, act, or thing which the Authority or the Contractor is required or authorised to take or do under this Contract may be taken or done only by any person duly authorised under this Contract by the Authority or the Contractor to take or do that decision, act, or thing on behalf of the Authority or the Contractor.

3.2.7 Accounting terms shall be construed so as to be consistent with generally accepted accounting principles.

3.2.8 Any reference to "third parties" or a "third party" shall be construed as a reference to any person who is not a Party.

3.2.9 Any decision, act, or thing which the Authority is required or authorised to take or do under this Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority.

3.2.10 Unless expressly specified otherwise, references to amounts expressed to be (indexed) are references to such amounts as indexed in accordance with Clause 11 (*Pricing and Instalments*).

3.2.11 Any reference in this Contract to a cost being treated or recoverable as an Allowable Cost (or similar or related references) shall be subject and without prejudice to:

- (a) the extent to which the pricing model that applies to the Service Category in respect of which the Contractor seeks to claim that it is an Allowable Cost, entitles the Contractor to recover Allowable Costs on an ascertained basis; and
 - (b) the Authority's right to challenge whether such cost is appropriate, attributable and reasonable, in each case subject to and in accordance with the SSCR.
- 3.2.12 Any obligation on the Contractor to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done.
- 3.2.13 Unless stated to the contrary, any reference to this Contract or to any other document in this Contract (other than a DEFCON, DEFSTAN, DEFFORM, AQAP, JSP or ISO Standard) are references to this Contract or such other document as varied, amended, novated, supplemented or replaced from time to time. Any variation, amendment, novation, supplement or replacement of this Contract or any DEFCON, DEFSTAN, DEFFORM, AQAP, JSP, ISO Standard or, for the avoidance of doubt, the Contractor's ERP System (and the impact on this Contract of any variation, amendment, novation, supplement or replacement of any other such document) shall only be effective as between the Parties if processed in accordance with Clause 50 (*Amendments to Contract*) or the Change Control Procedure.
- 3.2.14 Unless excluded within the terms of this Contract or where required by Law:
- (a) references to submission of documents in writing shall include electronic submission; and
 - (b) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature.

4 Order of Precedence

- 4.1 In the event of any inconsistency between the provisions of this Contract and/or between this Contract and any other document referred to in this Contract, then the following order of precedence shall apply:
- (a) Clause 61 (*Limitation of Liability*);
 - (b) the Special Conditions (excluding the Annexes);
 - (c) Clause 2 as relevant to the General Conditions but subject always to the notes contained in Clause 2;
 - (d) Subject to (c) above, the General Conditions;
 - (e) Annex A (*Statement of Requirements*); and
 - (f) all other Annexes (including all Appendices and Attachments),

so that the requirements and/or provisions listed in the higher ranked items, to the extent of the inconsistency, shall prevail. For the avoidance of doubt, the items identified in Clause 4.1(a) are highest ranked and the items identified in Clause 4.1(f) are lowest ranked.

4.2 Where there is a conflict or inconsistency between any of the Standards, the order of precedence shall be:

- (a) **Allied Publications and NATO Standards;**
- (b) **Defence Standards;**
- (c) **British Standards and International Standards; and**
- (d) **all remaining reference standards,**

so that the standards listed in the higher ranked items, to the extent of the inconsistency, shall prevail. For the avoidance of doubt, the items identified in Clause 4.2(a) are highest ranked and the items identified in Clause 4.2(d) are lowest ranked.

4.3 If a Party becomes aware of any inconsistency within or between any of the documents or items referred to in Clauses 4.1 or 4.2, such Party's Representative shall notify the other Party's Representative forthwith and the Parties will seek to resolve such inconsistency, and if either Party considers the inconsistency material, then the matter shall be determined in accordance with Clause 46 (*Dispute Resolution*).

5 Conditions Precedent

5.1 The Effective Date is conditional upon:

5.1.1 the delivery by the Contractor to the Authority of the Parent Company Guarantee, duly executed and delivered by the issuing party;

5.1.2 receipt by the Authority (in each case in form and substance satisfactory to it) of the following:

- (a) Not used;
- (b) a copy of the Contractor's corporate approval (in accordance with its articles of association) approving the entry into, terms of, and transactions contemplated by this Contract (and any other relevant documents) and resolving that it execute, deliver and perform this Contract (and any other relevant documents);
- (c) corporate authorisations (having due regard to the Parent's constitution) of the Parent in respect of the:
 - (i) entry into, and terms of, the Parent Company Guarantee, execution, delivery and performance of the Parent Company Guarantee; and
 - (ii) authorisation of a specified person or persons to execute the Parent Company Guarantee on its behalf, to give all notices and take all other action in connection with the Parent Company Guarantee;
- (d) Not used;
- (e) certified copies of the Contractor's memorandum and articles of association; and
- (f) certificates of insurance required pursuant to this Contract.

- 5.2 If any of the Conditions Precedent are not fulfilled to the reasonable satisfaction of the Authority or otherwise waived by the Authority within five (5) Business Days of the Effective Date the Authority reserves the right to determine that this Contract shall cease to be effective and this Contract will terminate on such date. Where neither Party is at fault for a failure to satisfy a Conditions Precedent, each Party shall bear its own costs arising from or connected with this Contract where it is terminated pursuant to this Clause 5.2.

6 Representations, Warranties and Undertakings

6.1 Authority Representations and Warranties

6.1.1 The Authority represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Contract;
- (b) this Contract is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and
- (d) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

6.2 Contractor Representation and Warranties

6.2.1 The Contractor represents and warrants to the Authority that:

Corporate

- (a) it is a limited liability company, duly incorporated and validly existing under the laws of England and Wales or Scotland (as applicable) and has the corporate power to sue and be sued in its own name and to own assets and to carry on business as it is now being conducted;
- (b) as at the Effective Date, it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;

Execution and performance of Contract

- (c) as at the Effective Date, all action necessary to authorise the execution of and the performance of its obligations under this Contract has been taken;

Members of Contractor Group

- (d) the Contractor is ultimately a wholly owned subsidiary of the Parent;

- (e) the Parent has no subsidiary in addition to members of the Contractor's Group Members that is involved in the provision of submarine or surface ship engineering support services on the basis set out in this Contract in favour of the Authority and does not directly or indirectly own or control a minority legal or beneficial interest (by way of minority voting rights, the right to appoint or remove less than a majority of the directors and/or otherwise) in any other company or legal entity that is involved in the provision of submarine or surface ship engineering support services on the basis set out in this Contract in favour of the Authority;
- (f) internal arrangements are in place to allow the Contractor to direct each member of the Contractor's Group to comply with the requirements of this Contract;

Lawful obligations

- (g) the obligations expressed to be assumed by the Contractor under this Contract are legal, valid, binding and enforceable to the extent permitted by Law;
- (h) the execution, delivery and performance by the Contractor of this Contract:
 - (i) does not constitute a default under any document or obligation, in each case, which is binding upon the Contractor;
 - (ii) does not conflict with the memorandum and articles of association of the Contractor; and
 - (iii) does not conflict with any Law, or court order applicable to the Contractor;

Allowable Costs

- (i) each estimate of Allowable Costs used in connection with the pricing of this Contract has and shall be prepared in good faith, after full and due scrutiny and with the intent that it includes only Allowable Costs;

Information

- (j) all information supplied by or on behalf of the Contractor (and supplied by Contractor Personnel authorised to provide such information) from 1 November 2021 until the Effective Date to the Authority in connection with the negotiations of, and entry into, this Contract was, to the best of the Contractor's knowledge and belief, complete, true and accurate in all material respects at the date it was supplied and was not misleading in any respect and the opinions, projections and forecasts in such information, and the assumptions on which they were based (acknowledging that any estimates provided were provided as estimates), have been arrived at after due and careful consideration and enquiry and genuinely represent the views of the Contractor;

Accounts

- (k) in relation to the latest accounts of the Contractor:
 - (i) such accounts were prepared and audited in accordance with GAAP and comply with the requirements of the Companies Act 2006 for the period then ended; and
 - (ii) no event has subsequently occurred which has had or could be reasonably expected to have a material adverse effect on the business or financial condition of the Contractor;

No threats to business

- (l) no claim is presently being assessed by any member of the Contractor's Group and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against any member of the Contractor's Group or any of the assets of any member of the Contractor's Group which might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;

No insolvency

- (m) within the previous 12 months, no Financial Distress Events (as defined in Annex H – Financial Distress) have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist;
- (n) 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 any member of the Contractor's Group 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 and revenues of such member of the Contractor's Group;

No Prohibited Acts

- (o) it has not committed any Prohibited Act;

Tax

- (p) it is not materially overdue in the filing of any tax returns;
- (q) no claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to taxes; and
- (r) it is a tax resident in the United Kingdom,

and the Authority relies upon such representations, warranties and undertakings.

Warranties cumulative

- 6.2.2 All warranties, representations, undertakings and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

Times when warranties and representations made

- 6.2.3 The Contractor makes all the representations and warranties in this Clause 6.2 on the Effective Date.
- 6.2.4 In addition, the Contractor is deemed to make all the representations, warranties and undertakings in this Clause 6.1, other than those in Clause 6.2.1(a), 6.2.1(b), 6.2.1(c), 6.2.1(j), 6.2.1(k)(ii), 6.2.1(l), 6.2.1(m) or 6.2.1(n) on the first (1st) anniversary of the Effective Date and each anniversary thereafter. On each occasion when the representation, warranty and undertaking in Clause 6.2.1(m) is repeated it shall only be given in respect of the Contractor and any holding company of the Contractor and be qualified by the words "save in respect of an internal solvent reconstruction or solvent re-organisation or amalgamation which will have no material adverse effect on the performance of the Services and which has been notified to the Authority at least thirty (30) days' in advance or such shorter period as was reasonable in the circumstances" which shall appear at the start of the provision.
- 6.2.5 Each representation, warranty and undertaking which it is deemed that the Contractor makes after the Effective Date shall be deemed to be made by reference to the facts and circumstances existing at the date the Contractor is deemed to make it.

6.3 Contractor Undertakings

- 6.3.1 The Contractor hereby agrees that it will not during the Contract Term without the prior written consent of the Authority:
- (a) not used;
 - (b) enter into any other obligation or arrangement, compliance with which will or is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
 - (c) whether by a single transaction or by a series of transactions (whether related or not) sell, transfer, lend or otherwise dispose of the whole or any part of its business or assets in a manner which will or is likely to have a material adverse effect on its ability to perform its obligations under this Contract; or
 - (d) knowingly permit any landlord, mortgagee or other third party any remedy (whether by way of lien or otherwise) which would have a material adverse effect on its ability to perform its obligations under this Contract or the Authority's right to legal and beneficial title to anything provided under this Contract.
- 6.3.2 The Contractor hereby agrees that during the Contract Term it shall as soon as reasonably practicable give the Authority Notice of all litigation before or of any court, arbitrator or adjudicator that the Contractor is a party to and which would or are likely to have a material adverse effect on its ability to perform its obligations under this Contract, such Notice shall be given as soon as it becomes aware that the same are threatened (following a letter before action being issued or

received by the Contractor) and immediately after they are commenced, provided that nothing in this Clause shall require the Contractor to disclose legally privileged or confidential information relating thereto.

7 Duration

7.1 Subject to Clause 7.2, the rights and obligations of the Parties shall take effect on the Effective Date and shall continue (except as set out in Clause 22 (*Continuing Obligations*)) until the earlier of:

- (a) **the Expiry Date; or**
- (b) **the Termination Date.**

7.2 Any Services shall be delivered and completed by the Contractor for the benefit of the Authority in accordance with the provisions of this Contract. The Contractor shall notify the Authority's Commercial Branch of any and all work outstanding at the end of the Contract Term. Where the completion of any Service(s) is likely to take place after the end of the Contract Term, unless the Authority notifies the Contractor to the contrary in writing, the Contractor shall take all steps necessary at no additional cost, charge and/or expense to the Authority to complete the delivery and performance of such Services within a reasonable period after the end of such period (and in any event in relation to any and all uncompleted Additional Services by each such service's respective completion date identified in the relevant Task Approval Form).

8 Contractor's General core Obligations

8.1 General

8.1.1 The Contractor shall provide the Services and the Contractor Deliverables from and including the Effective Date in accordance with the provisions of this Contract, including:

- (a) **those** requirements (and, where applicable, the Performance Levels) contained within:
 - (i) **Annex A (*Statement of Requirements*)**;
 - (ii) **Annex B (*Performance Measurement, Monitoring and Reporting*)**;
 - (iii) **Annex D (*Codes and Standards*)**;
 - (iv) **Annex E (*Deliverable Documentation*)**;
 - (v) **Annex S (*Exit Management*)**; and
 - (vi) any TAF in respect of any Additional Service approved by the Authority for delivery under Clause 9 (*Additional Services and Change Governance*) (the application of such being limited to the TAF concerned); and
- (b) **the Contractor's quality assurance systems identified in Clause 26 (*Quality Requirements*)**.

8.1.2 The Contractor undertakes to the Authority that the Contractor shall provide the Services and the Contractor Deliverables;

- (a) in accordance with Good Industry Practice;
- (b) **in accordance with all Law and Regulations from time to time; and**
- (c) **in accordance with any and all Necessary Consents (which the Contractor shall obtain and maintain at no additional cost, charge and/or expense to the Authority).**

8.1.3 The Contractor shall at all times act in good faith towards and co-operate fully with the Authority and/or its agents, representatives and contractors duly authorised to act in connection with the performance and delivery of the Services, the Contractor Deliverables and/or any other matter arising out of this Contract.

8.1.4 If the Contractor fails to provide the Services or otherwise comply with its obligations in accordance with this Contract, the Authority may, in addition to exercising its rights under Clause 11 (*Performance Levels and Performance Element Amounts*) of this Contract, require the Contractor to re-perform and discharge the relevant Services or obligations at no additional cost, charge and/or expense to the Authority.

8.2 Operational Damage

8.2.1 The Contractor shall notify the Authority's Project Manager of each and every incident of Operational Damage within two (2) Business Days after the Contractor first becomes aware of such damage.

8.2.2 The Contractor acknowledges and agrees that, and subject always to Clause 8.2.13:

- (a) save to the extent specified in Clause 8.2.2(b), it shall perform and discharge all of its respective obligations provided in Clauses 8.2.1 to 8.2.12 (inclusive) at no additional cost, charge and/or expense to the Authority, the performance and discharge of such obligations being within the Core Price; and
- (b) the Contractor may recover an amount equal to (but not in excess of) the OD Rectification Price (subject to the Authority's rights provided in Clause 8.2.12) in relation to the rectification and repair of any incident of Operational Damage up to the Aggregate OD Price Limit, solely where and to the extent that such rectification and repair has been authorised by the Authority pursuant to Clause 8.2.8.

8.2.3 The Contractor shall furthermore:

- (a) (as soon as is reasonably practical after the Contractor first becomes aware of any incident of Operational Damage and in any case within 20 (twenty) Business Days of receipt by the Contractor or (as the case may be) the Contractor Related Party of the equipment subject to the incident of Operational Damage (or such alternative period agreed between the Parties (acting reasonably))) supply concurrently to the Authority's Project Manager and the Authority's Commercial Manager a report in the format of an Operational Damage Sentencing of Events Form Part 1a as set out at Annex K (*Operational Damage – Sentencing Form*) for each incident, such report (as a minimum) including:
 - (i) the nature and identified cause of the relevant incident;
 - (ii) detail on the proposed rectification action;

- (iii) relevant recommendations to the Authority as to how the relevant category of Operational Damage might be prevented in future; and
 - (b) (as soon as is reasonably practical after the Contractor first becomes aware of any incident of Operational Damage and in any case within 40 (forty) Business Days of receipt by the Contractor or (as the case may be) the Contractor Related Party of the equipment subject to the incident of Operational Damage (or such alternative period agreed between the Parties (acting reasonably)) and provided that no determination has been made prior to this date that the relevant damage was **not** an incident of Operational Damage pursuant to Clause 8.2.5(a)) supply concurrently to the Authority's Project Manager and the Authority's Commercial Manager a proposal in the format of an Operational Damage Sentencing of Events Form Part 1b as set out at Annex K (*Operational Damage – Sentencing Form*) for each incident, such proposal (as a minimum) including:
 - (i) a Firm Price quotation for (i) the full rectification and repair of the relevant Operational Damage (the **Relevant Task**) with reference to its, and (where demonstrated by the Contractor to be reasonably necessary for such rectification and repair) each or any Sub-Contractor's(s'), reasonable additional Allowable Costs to be incurred directly in such rectification and repair based on the then prevailing, agreed rates specified in Annex I (*Contract Rates*); and (ii) an element of profit (such profit element to be calculated in accordance with the SSCR); together with evidence that [the costs are appropriate, attributable and reasonable and where reasonably practicable competitively procured (with no less than three competitively procured quotations informing such pricing) (the aggregate of (i) and (ii) being the **OD Rectification Price**);
 - (ii) demonstration that such Relevant Task represents the most cost-effective solution;
 - (iii) a true and accurate statement as to whether or not the quantum of the OD Rectification Price can be accommodated within the Aggregate OD Price Limit; and
 - (iv) the Contractor's proposed completion date for the work, which shall be reasonable in the circumstances.
- 8.2.4 If the Contractor fails to supply the information required under Clause 8.2.3 within the periods specified therein, the Authority may refer the matter to the Dispute Resolution Procedure for resolution and the Parties shall abide by and give effect to any determination made under that procedure in respect thereof.
- 8.2.5 The Authority will:
- (a) (upon receipt of the Operational Damage Sentencing of Events Form Part 1a) consider such form and shall (acting reasonably) as soon as is reasonably practicable (and in any case within ten (10) Business Days) after the Contractor shall have first submitted such form in accordance with Clause 8.2.3(a) endorse or reject the proposed designation as Operational Damage (confirming such sentencing in writing in the format of an Operational Damage Sentencing of Events Form Part 2a as set out at Annex K (*Operational Damage – Sentencing Form*)) and may (acting reasonably, where the Authority is minded to accept such designation) propose changes to such submission in connection with the

information provided for under Clause 8.2.3(a)(ii) (in which case the Parties shall meet to discuss and confirm how the Contractor's proposal submitted pursuant to Clause 8.2.3(a) shall be amended to accommodate such changes);

- (b) (upon receipt of the Operational Damage Sentencing of Events Form Part 1b in circumstances where such a proposal is required under Clause 8.2.3(b)) consider such form and shall (acting reasonably) as soon as is reasonably practicable (and in any case within twenty (20) Business Days) *after* the Contractor shall have supplied such information as is required under Clause 8.2.3(b) reject or accept such proposal (and in the case where the Authority is minded to accept such proposal the acceptance shall be given in accordance with Clause 8.2.8) and may (acting reasonably) propose changes to the Contractor's proposal pursuant to Clause 8.2.3(b), including in relation to the proposed completion date for the relevant work specified in such proposal (in which case the Parties shall meet to discuss and confirm how the Contractor's combined proposal submitted pursuant to Clause 8.2.3(b) shall be amended to accommodate such changes, the relevant completion date for the work (as adjusted by both Parties (acting reasonably) being the **Relevant Completion Date**).

Either Party may refer to the Dispute Resolution Procedure any matter arising from the operation of this Clause 8.2.5 for resolution.

- 8.2.6 If the Parties agree or it is otherwise determined that any damage in respect of which the Contractor shall have submitted an Operational Damage Sentencing of Events Form as set out at Annex K (*Operational Damage – Sentencing Form*) pursuant to Clause 8.2.3(a) is **not** Operational Damage, the Contractor shall manage, rectify and repair such damage at no additional cost, charge and/or expense to the Authority, the performance and discharge of such obligations being within the Core Price.
- 8.2.7 The Contractor shall not in any event proceed with any rectification and repair action in respect of any Operational Damage unless the Authority's Project Manager authorises such action in accordance with Clause 8.2.8.
- 8.2.8 Where (i) the Parties agree on the basis of the Contractor's submission pursuant to Clause 8.2.3 (but without prejudice to the operation of Clause 8.2.12) that Operational Damage has occurred and the Authority is satisfied with the Contractor's submission pursuant to Clause 8.2.3 (and all changes proposed by the Authority pursuant to Clause 8.2.5 have been agreed by both Parties (acting reasonably)); and (ii) the Authority wishes the relevant rectification and repair work to commence and be carried out, the Authority shall notify the Contractor to such effect in writing (in the format of an Operational Damage Sentencing of Events Form Part 2b as set out at Annex K (*Operational Damage – Sentencing Form*)), whereupon the Contractor shall rectify and repair the relevant damage in accordance with such submission (subject to such changes agreed between the Parties (acting reasonably)) by the Relevant Completion Date in consideration for the Authority's obligation to pay an amount equal to (subject to the operation of Clause 8.2.12) the OD Rectification Price relevant to such rectification and repair upon full completion of such rectification and repair or (as the case may be) in accordance with any stage payment plan agreed between the Parties (acting reasonably and such stage payment plan to be consistent with Clause 9.1.2(i)). The Contractor acknowledges and accepts that:

- (a) the Authority shall not be obliged to pay any amount in excess of the quantum of the OD Rectification Price (as may be adjusted in accordance with Clause 8.2.12) relevant to the full completion of such rectification and repair; and
- (b) the Authority shall not be obliged to make any payment in respect of such rectification and repair unless and until such rectification and repair have been completed or (as the case may be) in accordance with any stage payment plan agreed between the Parties (acting reasonably and such stage payment plan to be consistent with [Clause 9.1.2(i)]).

8.2.9 Where Operational Damage has occurred and for any reason the Authority does **not** wish the relevant rectification and repair work to commence and be carried out (including in circumstances where the OD Rectification Price is reasonably demonstrated by the Contractor to exceed (whether taken on its own or in combination with other Operational Damage rectification and repair work approved by the Authority and carried out by or on behalf of the Contractor pursuant to this Clause 8) the Aggregate OD Price Limit), the Authority shall notify the Contractor to such effect in writing (in the format of an Operational Damage Sentencing of Events Form Part 2b as set out at Annex K (*Operational Damage – Sentencing Form*)), in which case (i) the Contractor shall immediately comply with such instruction and not commence any work in relation to such rectification and repair; and (ii) the Contractor shall in respect of the Authority's notification instructing the Contractor not to rectify and repair such Operational Damage (such incident being a **Non-Instructed Operational Damage Incident**) be entitled to claim relief in accordance with, and subject to, Clause 17.

8.2.10 The Contractor shall:

- (a) maintain a full register of all Operational Damage incidents arising during the duration of the contract containing:
 - (i) the determination made for each incident,
 - (ii) such damage's respective rectification and repair date;
 - (iii) a meaningful summary of any rectification action carried out by or on behalf of the Contractor in respect thereof; and
 - (iv) the total aggregate amount of any OD Rectification Price (as may be adjusted in accordance with Clause 8.2.12); and
 - (v) the balance of the Aggregate OD Price Limit that remains available over the remainder of the Contract Period to meet Operational Damage incidents.
- (b) make such register available to the Authority upon the Authority's request; and
- (c) notify the Authority in writing promptly, if at any time the OD Rectification Price cumulatively incurred during the course of the Contract is equal to or exceeds 80 (eighty) per cent of the Aggregate OD Price Limit, to then enable further discussion to take place around the next steps both the Authority and Contractor would need to take to secure a higher Aggregate OD Price Limit.

8.2.11 The Contractor shall take all necessary steps to ensure that any information disclosed to the Authority under Clause 8.2.3 (or otherwise disclosed to the Authority in connection with any

incident of damage) is accurate and true and shall immediately notify the Authority's Commercial Officer (such notification being a **Contractor OD Notification**), if at any time the Contractor receives or becomes aware of any further information relating to the occurrence of any event which has been endorsed by the Authority as Operational Damage, giving details of that information to the extent that such information has not previously been disclosed to the Authority and/or renders information previously submitted inaccurate or misleading.

8.2.12 Where the Parties agree or it is otherwise determined under the Dispute Resolution Procedure that the effect of any matter(s) disclosed in the Contractor OD Notification is to reduce the costs associated with the rectification and repair of any Operational Damage or that the relevant damage was either not Operational Damage, the following provisions shall apply:

- (a) where further to such notification it is agreed or otherwise determined that the relevant damage was an incident of Operational Damage, but that such costs incurred or to be incurred in connection with such rectification and repair should have been lower than those claimed as the OD Rectification Price:
 - (i) (where the Authority has **not** yet paid any amount in respect of the rectification and repair of such damage pursuant to this Clause 8) the Authority shall be liable in respect of such incident of damage for no more than such lower amount;
 - (ii) (where such damage was treated as Operational Damage (and the Authority shall have paid an amount in respect of the rectification of such damage pursuant to this Clause 8) the Contractor shall recalculate the amount of costs and profit which can be taken into account when determining whether future rectification and repair costs and profit meet or exceed the Aggregate OD Price Limit and the Authority shall be entitled to recover in accordance with Clause 11 an amount equal to the difference between the Authority's payment amount and such lower amount; and
- (b) where further to such notification it is agreed or otherwise determined that the relevant damage (having been treated as Operational Damage) was **not** an incident of Operational Damage, any rectification and repair costs and profit incurred or to be incurred by or on behalf of the Contractor shall not be taken into account when assessing whether the quantum of future rectification and repair costs and profit meet or exceed the Aggregate OD Price Limit and the Authority shall be entitled to recover in accordance with Clause 11 an amount equal to any OD Rectification Price paid by the Authority to the Contractor in respect of such rectification and repair.

8.2.13 Where damage to equipment in the custody of the Authority has occurred and has arisen out of or in connection with any act, omission or neglect of the Contractor or any Contractor Related Party (and therefore does not constitute Operational Damage), the Authority may require that the Contractor rectify all such incidents of damage at the Contractor's cost and not as part of the Core Price.

8.3 Contractor Related Parties

8.3.1 The Contractor:

- (a) shall be responsible and liable for the acts and omissions of all Contractor Related Parties as if they were the acts and omissions of the Contractor (including in connection with the achievement of the KPIs); and
- (b) acknowledges and agrees that the appointment, employment or engagement by the Contractor of any Contractor Related Party shall not relieve the Contractor from any liability or obligations under this Contract.

8.3.2 The Contractor shall, as between itself and the Authority, be responsible for the selection of and the pricing of its engagement (in connection with this Contract) of all Contractor Related Parties. Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract be deemed to have such knowledge in respect of the Services and the Contractor Deliverables as is held (or ought reasonably to be held) by any Contractor Related Party.

8.3.3 The Contractor shall use all reasonable endeavours to procure that there shall be at all times sufficient staff (including all relevant grades of supervisory staff) engaged in the Services and delivery of the Contractor Deliverables with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each or any of the Services.

8.3.4 The Contractor shall:

- (a) not unlawfully discriminate within the meaning of the Equality Act 2010; and
- (b) use all reasonable endeavours to procure that there are set up and maintained by it and by all of its Sub-Contractors personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall use all reasonable endeavours to procure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are issued to the Authority's Representative within a reasonable time of their publication.

8.4 Necessary Consents

8.4.1 The Contractor shall:

- (a) identify, obtain, maintain and comply with all Necessary Consents other than **Authority Consents**, where necessary entering into of any legal agreements necessary for the grant of such Necessary Consents;
- (b) use reasonable endeavours to assist the Authority to obtain, maintain, implement and comply with all Necessary Consents that, as a matter of Law or policy, only the Authority is eligible to obtain (the **Authority Consents**);

- (c) be responsible for implementing each Necessary Consent within the period of its validity in accordance with its terms, applicable Law and Regulation save for those Necessary Consents which only the Authority can implement as a matter of Law or policy;
- (d) other than in respect of Authority Consents, provide to the Authority's Project Manager, when requested acting reasonably, a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consents obtained and any associated legal agreement;
- (e) comply with the conditions attached to any Necessary Consent and the terms of any associated legal agreement;
- (f) procure that no Necessary Consent or associated legal agreement is breached by it or any Contractor Group Member; and
- (g) preserve each Necessary Consent and procure that:
 - (i) each Necessary Consent is not revoked or quashed due to any act or omission of any Contractor Group Member; and
 - (ii) (to the extent within the Contractor's control) all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to carry out its obligations under this Contract,

and for the purposes of this Clause 8.4 the Contractor shall be deemed to have complied with its obligations to obtain or implement Necessary Consents to the extent that it has obtained or implemented the relevant Necessary Consents pursuant to any other agreement or arrangement between the Parties.

8.4.2 The Contractor shall not without the prior consent of the Authority's Project Manager (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the Commencement Date) or of any condition attached to it, provided that if the Contractor (acting reasonably) considers that a change, relaxation or waiver of a Necessary Consent must be applied for or agreed in circumstances where there is insufficient time to obtain the Authority's Project Manager's consent, it may continue with such application or agreement without that consent and shall notify the Authority's Project Manager thereof by electronic mail at the time of making such application or agreement together with (or following as soon as practicable thereafter) the reasons for the application or agreement. Subject to the compliance by the Contractor with its obligations under this Clause 8.4 and subject to the provisions of Clause 39 (*Change in Law*), references in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived. The Contractor shall (subject to the terms of Clause 61 (*Limitation of Liability*)) indemnify the Authority against all Losses incurred by it in respect of claims made against the Authority by third parties arising as a result of any breach of Clause 8.4.1 or Clause 8.4.2 by the Contractor and/or any act or omission of any Sub-Contractor or Contractor Group Member (but excluding where any Necessary Consent is under the direct control of the Authority), in connection with this Contract, that results in such breach.

8.4.3 The Authority shall, subject to the Contractor's compliance with Clause 8.4.1(b), use all reasonable endeavours to obtain and/or maintain all Authority Consents.

8.5 Authority Oversight

- 8.5.1 Neither the giving of any notice, certificate, approval, knowledge of the terms of this Contract nor the review of any document or course of action by or on behalf of the Authority or any of its advisers shall relieve the Contractor of any of its obligations under this Contract or of its duty to ensure the correctness, accuracy, completeness or suitability of the matter or thing which is the subject of the notice, certificate, approval, knowledge or review in question.
- 8.5.2 Without limitation to Clause 8.5.1, notwithstanding any approval of, or expression of satisfaction with, any drawings, specifications, schedules or any other relevant technical, administrative documents or data by the Authority, the Contractor shall be wholly responsible for the efficient and proper functioning as required by this Contract of all Contractor Deliverables supplied under it and for ensuring that any design required to be produced, updated or modified by the Contractor or Contractor Related Parties under the Contract is wholly complete, accurate and meets the Specifications and the other requirements of this Contract, such that Articles manufactured to such design shall similarly meet the Specifications and other requirements of this Contract.

8.6 Not Used.

9 Additional Services and Change Governance

9.1 Additional Services

- 9.1.1 If the Authority wishes the Contractor to perform a Task or Tasks, the Authority shall complete and issue to the Contractor Part A of the TAF. The Contractor acknowledges that the Authority shall be under no obligation to engage the Contractor to perform any Task or Tasks.
- 9.1.2 The Contractor shall respond within 20 (twenty) Business Days (or such alternative period agreed between the Parties (acting reasonably) after the date on which the Authority shall have issued Part A of the TAF to the Contractor by submitting to the Authority a document providing (as a minimum) the following:
- (a) a Firm Price quotation for (i) the relevant Task with reference to its, and (where demonstrated by the Contractor to be reasonably necessary for the relevant Task), each or any Sub-Contractor's(s') reasonable additional Allowable Costs to be incurred directly in the performance and delivery of such task based on the then prevailing agreed specified in Annex I (*Contract Rates*) and otherwise compliant with this Clause 9; and (ii) profit (such profit to be calculated in accordance with SSCR); together with evidence that [the costs are appropriate, attributable and reasonable] and where reasonably practicable with regard to the Authority's timescales competitively procured (with no less than three competitively procured quotations informing such pricing);
 - (b) (Where including travel and subsistence) details of any assumptions made about travel and the rates used and demonstration that such costs represent the most economic option available;
 - (c) details of the statement of work, including, but not limited to, the required performance levels which amongst others shall consist of the applicable acceptance and rejection criteria, and the applicable Codes, Standards and Specifications with which the Contractor is not otherwise required under the terms of this Contract to comply;

- (d) details of all dependencies, including, but not limited to, Authority dependencies (including any Government Furnished Assets (**GFA**) that may be required to complete the Task with the dates, location, timescales and duration period required in addition to the likely impact of any non-provision of the identified GFA. Any request for Government Furnished Information (GFI) shall be submitted using DEFFORM 316);
- (e) where applicable, a risk management plan detailing risk across the M-SET requirement;
- (f) the reasonably likely impact of Task on the Contractor's ability to meet the Performance Levels;
- (g) (where the Task includes work subject to DEFCON 15 or DEFCON 16) any DEFFORM 315 relevant to performance of the work and notification of compliance with Clauses 42.4 (*Private Venture Funding*), 42.6 (*Sub-Contracts*) and 42.7 (*Commercial Exploitation*);
- (h) details of how the Task is to be enabled;
- (i) (where requesting a stage payment plan, acting reasonably) details of clearly defined stage or milestone payments which:
 - (i) shall not include any more than four scheduled payments in the relevant Contract Year;
 - (ii) are dependent on the successful completion of all earlier stages or milestones and measurable against specified criteria (which shall comply with the requirements specified in sub-Clause (iii) immediately below) in the TAF;
 - (iii) only use criteria which clearly demonstrate progress attained towards the ultimate objective of the Task and shall not be based on work commenced or time elapsed;
 - (iv) the value of each stage or milestone shall be proportionate to the Contractor's direct expenditure as reasonably anticipated to be incurred by the scheduled payment date, provided that:
 - (A) the aggregate value of all stages shall be the total price of the Task and shall cover the amount of work carried out in relation to the whole Task; and
 - (B) the payment amount relevant to the attainment or achievement of such stage or milestone shall include a reasonable retention for the final payment such as to incentivise complete and proper performance of the Task (such final payment to equate to not less than 25 (twenty-five) percent of the total price of the Task, unless otherwise agreed between the Parties, acting reasonably);
- (j) the Task start date;
- (k) the Contractor's reasonable estimated Task completion date; and

- (l) a true and accurate statement as to whether or not the Task or Task's Firm Price can be accommodated within the AS Additional Price Limit.
- 9.1.3 If the Contractor identifies in relation to any Task any requirement for GFA, the Authority shall be under no obligation to meet all or any such GFA requirements. However, if and to the extent that the Authority meets such requirements, such assistance shall be reflected in an appropriate reduction to the price for such task.
- 9.1.4 It shall be the Authority's decision whether to accept or reject any change proposed by the Contractor to its initially submitted TAF proposal in respect of any Task or Tasks.
- 9.1.5 The Authority shall accept or reject the Contractor's quoted Firm Price for the Task or Tasks by signing and issuing Part C (the Task Acceptance/Rejection Form) of Annex L (*Task Approval Form*). Such acceptance of Part C of the Task Form shall be the Contractor's authority to proceed. Upon such acceptance being given:
- (a) the Contractor shall perform and discharge its obligations in relation to the relevant Additional Service in full in accordance with the relevant TAF; and
 - (b) the Contractor acknowledges and undertakes that no work in respect of any Task or Tasks shall commence without such written authorisation in respect thereof.
- The Authority shall not be liable to the Contractor for any work, activity or element not expressly provided for in the relevant TAF (including for any such work, activity or element performed prior to such TAF's authorisation in accordance with this Clause 9), unless specifically authorised and consented to by the Authority in writing in accordance with this Clause 9.1.5.
- 9.1.6 The Contractor undertakes that only TAF Part Cs signed by the Authority's Commercial Branch shall be accepted by the Contractor and that unsigned TAFs (Part Cs) or forms signed by any person other than Authority's Commercial Branch shall be returned to the Authority's Commercial Officer detailed at Box 1 of the DEFFORM 111.
- 9.1.7 The Parties acknowledge and agree that, if and when the Authority issues a TAF Part C signed by the Authority's Commercial Branch in respect of a Task, the performance and delivery of such task shall on and from (but not prior to) such date constitute a Service for the purposes of this Contract.
- 9.1.8 Payment of the agreed Firm Price for any Task so approved by the Authority shall be made on satisfactory completion of that task or (as the case may be) in accordance with any stage payment plan agreed between the Parties (acting reasonably), which shall include demonstrating the required performance levels pursuant to Clause 9.1.2(c) defined within the TAF have been achieved.
- 9.1.9 Where the Authority intends to reject any claim by the Contractor for any payment under this Clause 9, the Authority shall give to the Contractor notice in writing of the Authority's intention to reject such payment claim together with the Authority's reasons for such rejection.
- 9.1.10 If:
- (a) the Contractor fails to discharge its obligation provided in Clause 9.1.2; or

- (b) the Contractor fails to perform and deliver the relevant Additional Service in full in accordance with the relevant approved TAF (save to the extent that such failure has arisen out of a breach by the Authority of any of its obligations provided in this Contract and where such breach by the Authority has not itself arisen out of or in connection with any omission, neglect, default and/or wrongful act, committed or made by the Contractor and/or any Contractor Related Party or Contractor Related Parties),

the Authority may by giving the Contractor notice in writing terminate:

- (c) the relevant request (in the case of the occurrence of a failure identified in Clause 9.1.10(a)); or
- (d) (in the case of the occurrence of a breach identified in Clause 9.1.10(b)) the relevant Task,

without any liability to make any payment to the Contractor or (where any payment(s) has/have been made by the Authority) the Contractor shall pay to the Authority an amount equal to (i) all such payments made by the Authority in relation to the Task; and (ii) any and all TAF Termination Costs¹ subject to such additional costs being limited to an amount equal to the Firm Price of the Task. All payments due to be made by the Contractor to the Authority under this Clause 9.1.10 shall be paid to the Authority in accordance with Clause 11 within 30 (thirty) Business Days (or such other period agreed by the Authority acting reasonably) after receipt of the Authority's notice to terminate under this Clause 9.1.10.

9.1.11 The Contractor shall at no additional cost, charge and/or expense to the Authority, the performance and discharge of such obligations being within the Core Price:

- (a) maintain a register of all Tasks in the form set out at Annex E (*Deliverable Documentation*); and
- (b) make such register available to the Authority upon the Authority's request and in any event the register shall at a minimum be reported as part of the monthly report and be reviewed by the Parties in accordance with Annex E (*Deliverable Documentation*).

9.1.12 The Authority may notify the Contractor at any time in writing:

- (a) (prior to commencement of any Task and other than where the Authority's rights provided in Clause 9.1.10 apply) that the Authority requires the Contractor to cancel any request submitted pursuant to this Clause 9 (which shall include the rejection of any TAF proposal pursuant to Clauses 9.1.4 or 9.1.5). In this case the Contractor shall (without prejudice to Clause 9.1.5) be entitled to claim from the Authority (and the Authority shall pay in accordance with Clause 12, subject to and in accordance with SSCR) an amount equal to the lower of (A) the Firm Price (if accepted and approved by the Authority in relation to the Task pursuant to this Clause 9) and (B) the aggregate of any reasonable additional costs incurred by the Contractor directly in the discharge of its obligation provided in Clause 9.1.2 and (where demonstrated by the Contractor to be reasonably necessary for such discharge of its obligation provided in Clause 9.1.2) each or any Sub-Contractor's(s') reasonable additional costs to be incurred directly in the discharge of the obligations provided in Clause 9.1.2; and (ii) profit (such lower amount as assessed subject to the

principles set out in (i) to (iii) (inclusive) immediately below being the **TAF Withdrawal Costs**);

provided that:

- (i) any such reasonable additional costs do not include any form of double recovery;
 - (ii) the Contractor promptly complied with any direction given by the Authority pursuant to this Clause 9.1.12(a);
 - (iii) the Contractor took all reasonable steps at all times to minimise the extent of such additional costs; or
- (b) (on or following commissioning of a Task, save where the Contractor has failed to provide such task in accordance with the terms set out in the relevant TAF approved by the Authority pursuant to this Clause 9, in which case Clause 9.1.10 shall apply) that the Authority requires the Contractor to cease providing such Task (or part thereof), in which case the Authority shall pay to the Contractor the lower of (A) the Firm Price accepted and approved by the Authority in relation to the Task pursuant to this Clause 9 and (B) an (subject to an in accordance with SSCR) amount (i) equal to the Contractor's costs based on the then prevailing, agreed rates specified in Annex I (*Contract Rates*) arising out of the Contractor's performance and delivery of any such services up to the date of such written notice; and (ii) profit (such lower amount being the **TAF Cancellation Costs**).

9.1.13 If any dispute arises in relation to any Task (including the pricing of any Task), the Parties agree to refer to, and settle such dispute in accordance with, the Dispute Resolution Procedure.

9.1.14 The Parties acknowledge and agree that (notwithstanding any other provision of this Contract):

- (a) none of the Additional Services shall in or by itself constitute the subject matter of a Change (as defined in clause 1 of DEFCON 620 (Edn 06/22) or Changes; and
- (b) each Additional Service shall be reviewed and treated solely in accordance with (and subject to) Clauses 9.1.1 to 9.1.13 (inclusive) and not DEFCON 620 (Edn 06/22),

provided that where any other Special Condition specifies that a matter shall be dealt with in accordance with the Contract Change Procedure this shall take precedence over this Clause 9.1.14, to the extent of any inconsistency.

9.1.15 The Contractor shall:

- (a) maintain a full register of any Task or Tasks raised during the Contract Period containing:
 - (i) a detailed summary of the Task or Tasks to be completed;
 - (ii) the Firm Price agreed for each authorised Task or Tasks;
 - (iii) the total aggregate amount of all Tasks authorised accommodated within the AS Additional Price Limit; and

- (iv) the balance remaining against the AS Additional Price Limit after the deduction of the Firm Price of all Tasks authorised.
- (b) make such register available to the Authority upon the Authority's request; and
- (c) notify the Authority in writing promptly, via UEW Commercial Branch, if at any time the Task's pricing cumulatively incurred during the course of the Contract is equal to or exceeds 80 (eighty) per cent or more of the AS Additional Price Limit, to then enable further discussion to take place around the next steps both the Authority and Contractor would need to take to secure a higher AS Additional Price Limit(if required).

9.2 Change Governance pursuant to DEFCON 620

9.2.1 Notwithstanding any provision of DEFCON 620 (Edn 06/22), the Authority shall be entitled at any time to revoke an Authority Notice of Change and/or its consent having been given to any Contractor Change Proposal and direct the Contractor not to commence or to cease to implement any Change, in which case:

- (a) the Contractor shall promptly comply with such direction; and
- (b) this Contract and the Parties' respective rights and obligations under or in connection with its terms shall be construed as if such notice or proposal had not been issued,

and the Parties shall execute whatever documents are required to give effect to the operation of this Clause 9.2.1.

9.2.2 Without prejudice to clause 13 of DEFCON 620 (Edn 06/22), if the Authority exercises any of its rights provided in Clause 9.2.1 for any reason not arising out of or connection with any omission, neglect, default and/or wrongful act committed or made by the Contractor and/or any Contractor Related Party or Contractor Related Parties, the Contractor shall, subject to an in accordance with SSCR, be entitled to claim payment from the Authority of an amount equal to:

- (a) any additional Allowable Costs incurred by the Contractor directly in the performance and delivery of the relevant Change (including the production of the Contractor Change Proposal, where the Authority has revoked its consent having been given to any Contractor Change Proposal for any such reason, but not otherwise); and
- (b) (where demonstrated by the Contractor to be reasonably necessary for such production of the Contractor Change Proposal) each or any Sub-Contractor's(s') reasonable additional costs so incurred;

with all such costs to be based on the then prevailing, agreed rates specified in Annex I (*Contract Rates*) together with an element of profit in accordance with SSCR),

provided that:

- (c) (where the Authority has revoked its consent having been given to any Contractor Change Proposal) the Contractor Change Proposal complied fully with clauses 8 and 10b of DEFCON 620 (Edn 06/22);
- (d) any such reasonable additional costs do not include any costs and fees arising from compliance with any or all of Notes 2, 3 or 4 specified in [the table in Clause 2.1 against DEFCON 620 (Edn 06/22) nor otherwise constitute any form of double recovery;
- (e) the Contractor discharged its obligation provided in Clause 9.2.1(a); and
- (f) the Contractor took reasonable steps to minimise such additional costs.

10 Deliverable Documentation

10.1 The Contractor acknowledges and agrees that:

- (a) all items of Deliverable Documentation required to be delivered by the Contractor to the Authority in accordance with this Contract shall (as a minimum) meet the requirements specified in Annex E (*Deliverable Documentation*) or as required in connection with any Additional Service pursuant to Clause 9; and
- (b) all draft documentation shall be of a professional standard and shall be issued in accordance with the Contractor's ISO approved procedures and submitted to the Authority's Project Manager to the timescales specified in Annex E (*Deliverable Documentation*) or as required in connection with any Additional Service pursuant to Clause 9.

10.2 Acceptance/Rejection Process for Deliverable Documentation

10.2.1 The Authority's Project Manager shall respond within 10 (ten) Business Days after his or her receipt of each such deliverable documentation issued in draft or within an alternative time period agreed between the Parties either:

- (a) accepting the relevant Deliverable Documentation by completing the acceptance form in writing; or
- (b) rejecting such Deliverable Documentation in writing. Where a rejection form shall have been issued the Contractor shall resubmit such Deliverable Documentation within 4 (four) calendar weeks after the date of rejection and upon such receipt the acceptance/rejection process specified in this Clause 10.2.1 shall restart from the beginning.

10.2.2 Where any Deliverable Documentation is not received timeously by the Authority pursuant to this Clause 10, the Authority reserves the right to retain any applicable Performance Element Amount in accordance with this Clause 10 (*Deliverable Documentation*) and Clause 11 (*Performance Levels and Performance Element Amounts*), and Annex B (*Performance Measurement, Monitoring and Reporting*) and Annex G (*Contract Payment Plan*).

11 Pricing and Instalments

11.1 Pricing Methods and Amounts

11.1.1 *Core obligations:* Other than as referred to in Clauses 11.1.2 and 11.1.3:

- (a) this Contract is priced using the fixed pricing method referred to in Regulation 10(4) of the SSCR; and
- (b) subject to Clause 11.5 (*Variation of Price Adjustment*) and Clause 11.6 (*Safety Net*), the price payable by the Authority in respect of the Contractor's obligations under this Contract is:
 - (i) the Core Price; and
 - (ii) each Performance Element Amount (and the Parties acknowledge and agree that each Performance Element Amount constitutes an incentive adjustment, as contemplated pursuant to Regulation 11(6) of the SSCR).

11.1.2 *Operational Damage (where applicable):*

- (a) Where pursuant to Clause 8.2 (*Operational Damage*) the Authority is required to pay for the Contractor's obligations in respect of an item Operational Damage, such obligations shall be priced in accordance with Clause 8.2 (*Operational Damage*) using the firm pricing method, as referred to in Regulation 10(3) of the SSCR.
- (b) The Parties acknowledge that the Authority's total liability in respect of Operational Damage shall not exceed the applicable Additional Work Limit.

11.1.3 *Additional Services:*

- (a) The Contractor's obligations in respect of each item of Additional Services shall be priced in accordance with Clause 9.1 (*Additional Services*), using the firm pricing method, as referred to in Regulation 10(3) of the SSCR.
- (b) The Parties acknowledge that the Authority's total liability in respect of Additional Services shall not exceed the applicable Additional Work Limit.

11.2 Additional Work Limit

For the purposes of Clause 11.1, the **Additional Work Limit** in respect of:

- (a) the Contractor's obligations in respect of Operational Damage shall be **(Information Redacted)** as the same may be amended from time to time in accordance with Clause 8.2 (*Operational Damage*); and
- (b) Additional Services shall be **(Information Redacted)** as the same may be amended from time to time in accordance with Clause 9.1 (*Additional Services*).

11.3 Contract Profit Rate

Error! Reference source not found. (*Contract Profit Rates*) of Annex M (*Pricing Materials*) shall apply.

11.4 Amount and instalments of Core Contract Price

11.4.1 The **Core Price** is the total amount set out in the Contract Total of the Core Price Column in Annex G (*Contract Payment Plan*).

11.4.2 The **Monthly Core Price Instalment** is the instalment of the Core Price attributable to each Contract Month (m), being the amount set out in the row for Contract Month (m) in the Core Price Column in Annex G (*Contract Payment Plan*).

11.5 Calculation of Variation of Core Price

11.5.1 The Parties acknowledge and agree that the Allowable Costs used in calculating the Core Price are fixed at January 2023 price levels and are subject to adjustment in accordance with this Clause 11.5, subject to Clause 11.6 (*Safety Net*).

11.5.2 Adjustments (each a **Variation of Price Adjustment**) shall (subject to Clause 11.6 (*Safety Net*)) be made to the Monthly Core Price Instalment in respect of:

- (a) the materials element of Allowable Costs for each Contract Month (m), calculated in accordance with Clause 11.5.3(a) (a **Materials Cost VOPA**); and
- (b) the labour element of Allowable Costs for each Contract Month (m), calculated in accordance with Clause 11.5.3(b) (a **Labour Cost VOPA**).

11.5.3 For the purposes of Clause 11.5.2:

- (a) the **Materials Cost VOPA** for Contract Month (m) shall be an amount calculated as follows:

[Information Redacted]

- (b) the **Labour Cost VOPA** for Contract Month (m) shall be an amount calculated as follows:

[Information Redacted]

where:

- (i) **[Information Redacted]** is the materials cost component of the Monthly Core Price Instalment for Contract Month (m), being the amount set out in the row for Contract Month (m) in the Materials Price Column in Annex G (*Contract Payment Plan*);
- (ii) **[Information Redacted]** is the labour cost component of the Monthly Core Price Instalment for Contract Month (m), being the amount set out in the row for Contract Month (m) in the Labour Price Column in Annex G (*Contract Payment Plan*);

- (iii) **[Information Redacted]** is the Relevant Index for January 2023;
- (iv) **[Information Redacted]** is
 - (A) for the purposes of calculating the Materials Cost VOPA for Contract Month (m), the value of the Relevant Index for Contract Month (m);
 - (B) for the purposes of calculating the Labour Cost VOPA for Contract Month (m), the value of the Relevant Index for the month of January in the year in which the Contract Month (m) falls;
- (v) **[Information Redacted]** is the Productivity Adjustment applicable to the Contract Year in which Contract Month (m) falls;
- (vi) the **[Information Redacted]** is:
 - (A) for Contract Years 1 to 3: **[Information Redacted]**;
 - (B) for Contract Years 4 to 12 **[Information Redacted]**; and
 - (C) for Contract Years 13 to 15: **[Information Redacted]**;
- (vii) the **Relevant Index** is (subject to Paragraphs 11.5.4 to 11.5.10 (inclusive) and to Paragraph 6 (*Revision of Relevant Indexes*) of Annex Z (*Safety Net*):
 - (A) for the purposes of calculating Materials Cost VOPA for Contract Month (m): **[Information Redacted]**; and
 - (B) for the purposes of calculating Labour Cost VOPA for Contract Month (m): **[Information Redacted]**

11.5.4 Illustrative examples of the calculation Variation of Price Adjustments are set out in Part 2 (*VOPA Examples*) of Annex M (*Pricing Materials*).

11.5.5 The Contractor shall:

- (a) within 10 (ten) Business Days of the end of each Quarter prepare and submit to the Authority a calculation of the Materials Cost VOPA for each prior Contract Month (m) in respect of which the value of *O_i* specified in Clause 11.5.3(b)(iv)(A) has been published and the Materials Cost VOPA has not already been determined;
- (b) as soon as reasonably practicable after the value of *O_i* specified in Clause 11.5.3(b)(iv)(B) for Contract Year (c) has been published prepare and submit to the Authority a calculation of the Labour Cost VOPA for each Contract Month (m) in Contract Year (c).

11.5.6 The Authority shall review each of the Contractor's calculations provided under Clause 11.5.5, and either confirm or reject the same within 5 (five) Business Days. Where accepted by the Authority, the Contractor shall (where applicable) submit its invoice via CP&F in accordance with DEFCON 522 (Edn 11/21). Where the Authority intends to reject, it shall give the Contractor notice in writing detailing the reasons for rejection.

- 11.5.7 If any material changes are made to a Relevant Index (e.g., a revised statistical base date) during the period of the Contract and before final adjustment of the final contract price, then the re-basing methodology outlined by the Office for National Statistics (**ONS**), the series providers) to match the original index to the new series shall be applied.
- 11.5.8 In the event the agreed index or indices cease to be published (e.g., because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Clause 11.5.7 above) shall then be applied.
- 11.5.9 Notwithstanding the above, any extant index / indices agreed in the Contract shall (subject to Paragraph 6 (*Revision of Relevant Indexes*) of Annex Z (*Safety Net*) and Paragraph 11.5.10) continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.
- 11.5.10 The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which the provisions in this Clause 11.5 were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both parties may consider whether any change in this provision would be appropriate.
- 11.5.11 Subject to Clause 11.5.5, prices shall be adjusted taking into account the effect of the above formulae as soon as possible after publication of the relevant indices or at a later date if agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.
- 11.5.12 Claims under this Clause 11.5 shall be submitted to the Bill Paying Branch, certified to the effect that the “requirements of Clause 11.5 (*Calculation of Variation of Core Price*)” have been met.
- 11.5.13 The provisions of clauses 9.6 to 9.9 of Annex F (Governance) shall apply.

11.6 Safety Net in respect of Core Price

Clause 11.5 (Calculation of Variation of Price) shall be subject to the provisions set out in Annex Z (*Safety Net*).

12 Payment of Contract Price

12.1 Determination of Services Payments for Payment Month

- 12.1.1 The Services Payments due to the Contractor in respect of each Payment Month (m) shall be payable by the Authority subject to and in accordance with Clause 12.2 (*Payments to the Contractor of the Monthly Services Payments*) (plus an amount equal to any applicable VAT for which it is liable in respect of such Services Payments, such liability being governed by the provisions of DEFCON 513 (Edn 04/22)). Such Services Payments (net of any Contract Price Adjustment Amounts) shall be the Contractor's sole remuneration for the performance of its obligations under this Contract.

12.1.2 For the purposes of Clause 12.1.1, the following payments (each a **Services Payment**) shall be due in respect of Payment Month (m):

- (a) **Monthly Core Price Instalment: if the month before Payment Month (m) is a Contract Month (m), the** Monthly Core Price Instalment for such Contract Month (m), less any profit withholding that applies pursuant to Clause 13 (*Performance Levels and Performance Incentives*);
- (b) **VOPA amounts: if the month before Payment Month (m) is the final month of a Quarter (q):**
 - (i) **each** Materials Cost VOPA payable to the Contractor (if any, and not already invoiced) for each prior Contract Month (m) in respect of which the value of *Oi* specified in Clause 11.5.3(b)(iv)(A) has been published;
 - (ii) **each Labour** Cost VOPA payable to the Contractor (if any, and not already invoiced) for each prior Contract Month (m) in respect of which the value of *Oi* specified in Clause 11.5.3(b)(iv)(B) for the Contract Year (c) in which such Contract Month (m) falls has been published;
- (c) **Performance Element Amount: if the month 2 (two) months before Payment Month (m) is a Contract Month (m), the Performance Element Amount for such Contract Month, and any released profit withholding, in each case as calculated in accordance with Clause 13** (*Performance Levels and Performance Incentives*);
- (d) **Safety Net adjustments: any of the following Safety Net amounts which, at the start of Payment Month (m), has been determined to be payable to the Contractor:**
 - (i) **a Provisional Comparative Amount determined under Paragraph 4.2 of Annex Z (Safety Net), less the retention referred to in Paragraph 4.7 of Annex Z (Safety Net);**
 - (ii) **a retention amount released under Paragraph 4.7.1 of Annex Z (Safety Net); or**
 - (iii) **a reconciling amount payable under Paragraph 4.7.1 of Annex Z (Safety Net);**
- (e) **Additional Services payments:** the aggregate of any amount or amounts which the Authority is liable to pay to the Contractor in respect of any Additional Service(s) authorised during the course of the Contract, where such payments fell due in the Contract Month before Payment Month (m) in accordance with Clause 9.1.8;
- (f) **Operational Damage payments:** the aggregate of any amount or amounts which the Authority is liable to pay to the Contractor under this Contract in respect of any OD Rectification Price authorised during the course of the Contract pursuant to Clause 8.2.8, where such payments fell due in the Contract Month before Payment Month (m).

12.1.3 The Parties acknowledge and agree that amounts (each a **Contract Price Adjustment Amount**) may be due to the Authority from the Contractor in respect of:

- (a) Safety Net adjustments pursuant to Annex Z (*Safety Net*);

- (b) Variation of Price Adjustments pursuant to Clause 11.5 (*Calculation of Variation of Core Price*);
- (c) Additional Services obligations pursuant to Clause 9.1; and
- (d) Operational Damage obligations pursuant to Clause 8.2 (Operational Damage).

12.2 Payments to the Contractor of the Monthly Services Payments

- 12.2.1 The Contractor shall only be entitled to claim any Services Payment due to it in respect of Payment Month (m) pursuant to Clause 12.1, if the Authority certifies or has already certified in writing that the Contractor shall have satisfactorily completed or performed the elements of the Contract to which the payment relates (such elements being specified in Annex A (*Statement of Requirement*) and Annex E (*Deliverable Documentation*), provided that the Authority shall not be obliged to make any such payment, if the Authority has reasonable cause to believe that the Contractor will be unlikely to render complete performance of all of its obligations provided in this Contract.
- 12.2.2 Where the Authority intends to reject any claim by the Contractor for any Services Payment under this Clause 12, the Authority shall give to the Contractor notice in writing of the Authority's intention to reject such payment claim together with the Authority's reasons for the rejection.
- 12.2.3 The Services Payments will be made by electronic transfer. Prior to submitting any claims for payment under this Clause 12.2, the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- 12.2.4 Payment will be authorised by the Authority's Project Manager identified at box 2 of DEFFORM 111 (Appendix – Addresses and other Information) and made via CP&F in accordance with DEFCON 522 (Edn 11/21).
- 12.2.5 Unless otherwise agreed by the Parties, each of the Services Payments which the Authority is liable to pay to the Contractor as specified in Clause 12.1 in respect of a Payment Month shall be subject to a discrete CP&F order and Contractor invoice.
- 12.2.6 The Contractor shall give effect to DEFCON 534 (Edn 06/21) in relation to any and all payments.
- 12.2.7 Where the Contractor submits an invoice to the Authority in respect of a Services Payment, the Authority will consider and verify that invoice in a timely fashion.
- 12.2.8 Any sums due under an invoice issued by the Contractor under this Clause 12.3 be due for payment in accordance with DEFCON 522 (Edn 11/21).
- 12.2.9 The approval for payment of a valid and undisputed claim for payment by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.
- 12.2.10 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other UK Government department.

- 12.2.11 If the payment or deduction of any amount invoiced by the Contractor is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

12.3 Payments to the Authority

- 12.3.1 All payments under or pursuant to this Contract due or to become due by the Contractor to the Authority shall be made by the Contractor no later than twenty-two (22) Business Days (or such other period as set out in this Contract) from the day on which they become due. The Authority shall submit an invoice in respect of each such amount.
- 12.3.2 The Contractor shall make any payment due to the Authority free of any deduction whatsoever and the Contractor is not entitled to retain or set off any amount due to the Authority by it.

13 Performance Levels and Performance Incentives

13.1 General

- 13.1.1 The Contractor shall provide the Services in such a manner so as to meet or exceed the required Performance Levels as defined in Annex B (Key Performance Measurement, Monitoring and Reporting).
- 13.1.2 The Contractor shall take all reasonable remedial action to rectify or to prevent a Bronze rating from occurring or recurring, and shall, as part of the Monthly Report, where a KPI is given a rating of Bronze rating in a Relevant Monthly Period (as defined in Clause 13.2.1 below), and if agreed as appropriate, provide a remedial plan to the Authority within ten (10) Business Days (or such other period as agreed between the Parties) detailing the steps the Contractor will take to ensure compliance with the KPI where possible in the Subsequent Monthly Period (as defined in Clause 13.2.1 below) or such longer period as agreed by the Parties in the Remedial Plan.
- 13.1.3 Without limiting any other obligation under or in connection with this Contract, the Contractor shall implement and use appropriate measurement, monitoring and management tools and procedures to enable it to:
- (a) detect all Bronze ratings as soon as reasonably practicable and, to such extent as is reasonably practicable, detect any potential future Bronze rating;
 - (b) minimise the impact of any Bronze Rating on the continued provision of the Services; and
 - (c) report all Bronze ratings and forecasted Bronze ratings to the Authority in accordance with Annex B (*Performance Measurement, Monitoring and Reporting*).
- 13.1.4 Both the KPIs and PIs will be reviewed on an annual basis by the Authority and the Contractor for appropriateness. Where it is considered by both Parties that a KPI is no longer appropriate it may be moved to become a PI or removed entirely. Similarly, a PI may become a KPI or removed entirely. By written agreement between the Parties new KPIs and PIs may be introduced.

13.2 Performance Element Amount

13.2.1 Where in respect of any [monthly period (being the **Relevant Contract Month**)], the Contractor's performance rating against any KPI:

- (a) is demonstrated to be a GOLD level of performance, the Contractor shall be entitled to claim the agreed Performance Element Amount set out against that KPI in Annex G (*Contract Payment Plan*) in respect of the Relevant Contract Month; or
- (b) is demonstrated to be a SILVER level of performance, the Contractor shall not be entitled to make a claim for the Performance Element Amount set out against the relevant KPIs in Annex G (*Contract Payment Plan*) that are SILVER in respect of the Relevant Contract Month and hereby waives any and all entitlement to claim and/or recover such amount under or in connection with this Contract; or
- (c) is demonstrated to be a BRONZE level of performance, the Contractor shall:
 - (i) the Contractor shall not be entitled to make a claim for the Performance Element Amount set out against the relevant KPIs in Annex G (*Contract Payment Plan*) that are BRONZE in respect of the Relevant Contract Month and hereby waives any and all entitlement to claim and/or recover such amount under or in connection with this Contract; and
 - (ii) the Authority shall be entitled to exercise its rights under Clause 13.4.

13.2.2 Where performance against a KPI is demonstrated to be SILVER or BRONZE level and the Contractor can provide evidence that the circumstances that have given rise to the SILVER or BRONZE performance are not within the reasonable control of the Contractor, then the Contractor shall be entitled to remove the circumstance from the relevant KPI and rerun the calculation. If the resulting performance against the KPI is demonstrated to be a GOLD level of performance then para 13.4(a) above will apply.

13.3 Temporary Retention of Profit

13.3.1 In the event that a BRONZE performance rating occurs in any single month, Thales are to inform the Authority of the cause in writing (within 5 days of becoming aware of the issue) and monitor the issues identified. If the performance level returns to SILVER or above in the following (second) month, no further rectification action is required.

13.3.2 In the event that a BRONZE performance rating occurs in the following (second) month, Thales are to provide a written summary to the Authority's Project Manager (within the first 10 days of the second month) of the actions taken to rectify the performance issue identified in month 1.

13.3.3 In the event of a BRONZE performance rating in the following (third) month and thereafter in each month the rating continues to be Bronze, the 10% of the Monthly Core Price for month three (3) and applicable month thereafter multiplied by the weighting for the KPI scored as BRONZE (KPI weighting as set out in Annex B (Key Performance Measurement, Monitoring and Reporting)), shall be temporarily withheld by the Authority from the next payment of the Monthly Core Price Instalment that follows determination of the relevant Bronze rating (**Profit Withholding 3**). Thales will be notified of the Authority's intention to hold any retention in accordance with this clause as

soon as reasonably practicable but otherwise within 5 working days following the determination of the relevant BRONZE performance rating.

- 13.3.4 Subject to Clause 13.3.5, following any Profit Withholding 3, upon a Relevant Contract Month in respect of the KPI for which Profit Withholding has occurred being determined to be SILVER or GOLD, there shall be no further Profit Withholding 3 from the Monthly Core Price Instalment payable following such determination until such time as the events set out in Clauses 13.3.1 to 13.3.3 (inclusive) reoccur.
- 13.3.5 The amount withheld by the Authority in relation to any Profit Withholding 3 shall continue to be held by the Authority until such time as the number of Relevant Contract Months determined to be SILVER or GOLD in respect of the KPI against which such Profit Withholding was made are equivalent to the number of Relevant Contract Months that had been determined as BRONZE following which the Profit Withholding 3 shall be released month by month on the same basis it had accrued.
- 13.3.6 The following tables (Fig 1 & 2 below) illustrate the operation of Clauses 13.3.1 to 13.3.5 (inclusive):

FIG 1

[Information Redacted]

FIG 2

[Information Redacted]

13.4 Further Profit Withholding Mechanism

- 13.4.1 Should the Contractor incur 5 BRONZE monthly performance scores against the same KPI in any 12-month period (and provided the Authority has not exercised its rights under Clause 13.3.3 and no Profit Withholding 3 is subsisting), the Contractor may withhold an amount equal to 10% of the Monthly Core Price due in the 5th month of BRONZE performance multiplied by the KPI weighting from the next payment of the Core Price (**Profit Withholding 5**) which shall be withheld until such time as it is determined that the Contractor has achieved a SILVER or GOLD rating in three (3) consecutive Relevant Contract Months. For the avoidance of doubt, following the occurrence of a fifth (5th) BRONZE rating in a twelve (12) month period the count will reset but any withholding shall continue until three (3) consecutive Relevant Contract Months are determined to be SILVER or GOLD including if such months fall in the next or any later twelve (12) month rolling period.
- 13.4.2 For the avoidance of doubt, if in the same Contract Month, the Contractor has incurred 3 BRONZE monthly performance scores AND has incurred 5 BRONZE monthly performance scores, each against the same KPI, the Authority will only be able to exercise its rights under Clause 13.4.1 which shall apply to the exclusion of any right under Clause 13.3.3.
- 13.4.3 The following tables (Fig 1 & 2 below) illustrate the operation of Clause 13.4.1 (inclusive):

Fig 1

[Information Redacted]

Fig 2

[Information Redacted]

13.5 End of Contract Period Withholding

If any Profit Withholdings are payable to the Contractor at the end of the contracted period of Contract support, they shall be released by the Authority and included within the Final Price Adjustment (FPA) activities that form part of the Contract expiry discussions.

13.6 Payment of PEA and Profit Withholdings

Following determination by the Parties that:

- (a) any KPI is GOLD; and /or
- (b) a KPI is SILVER or GOLD and such rating triggers release of any Profit Withholding under Clause 13.3.5 and/or 13.4.1,

the Contractor shall be entitled to issue an invoice to the Authority pursuant to the CP&F requirements in the aggregate amount of all PEA due together with any Profit Withholding to be released.

13.7 Reasonable and Proportionate Remedy

The Parties confirm that:

- (a) the overall Performance Element Amount, each Performance Element Amount for a KPI and the methodology for Contractor entitlement set out in this Clause 13, Annex B (Performance Measurement, Monitoring and Reporting), and Annex G (Contract Payment Plan); and
- (b) the retention of any Profit Withholding,

represent a reasonable and proportionate incentive to protect the Authority's legitimate interest in performance in connection with the Services, the Contractor Deliverables and this Contract.

13.8 Sole Financial Remedy

Subject to:

- (a) any obligation of the Contractor under the Contract to itself correct non-conforming Services;
- (b) any other express right, remedy or cause of action of the Authority pursuant to, or in relation to, this Contract (including but not limited to Clause 19 (*Contract Termination (other than a Force Majeure Event based termination)*) and Clause 61 (*Limitation of Liability*);

- (c) the Authority's right to claim, on or after termination of this Contract, an amount equal to the Termination Costs; and
- (d) where a BRONZE rating has arisen due to the wilful default by the Contractor or any Contractor Personnel;

the Authority's sole financial remedy in respect of any: (i) SILVER rating shall be the Contractor's loss of its entitlement to PEA; and (ii) BRONZE rating shall be the Contractor's loss of its entitlement to PEA and the Authority's right to make any Profit Withholding.

14 Payments - General

If CP&F is at any stage during the Contract Term likely to be replaced with an alternative payments system, the Authority shall promptly notify the Contractor to such effect and the Parties shall meet to discuss and agree (each acting reasonably) amendments to this Contract to reflect the impact of such replacement system on its terms on a no better, no worse basis, such amendments to take effect on such basis once the replacement system has been adopted by the Authority.

14.1 Payment Interest, Payment Liability and Disputed Amounts

14.1.1 Where and to the extent that any amount payable, but unpaid, by either Party under this Contract would otherwise be a 'qualifying debt' under the Late Payment of Commercial Debts (Interest) Act 1998 (the **Act**):

- (a) the interest provided for by this Clause 14.1.1 is a contractual remedy and is not statutory interest. Therefore, to the extent permissible by Law, the provisions of the Act relating to statutory interest shall not apply to this Contract;
- (b) from the day after the day on which the amount payable is due and thereafter until payment is made simple interest at the prevailing rate of statutory interest (as defined in the Act) (such rate being the **Prescribed Rate**) may be claimed by the other (non-paying) Party on the value of all valid, undisputed claims for payment (or unpaid parts thereof);
- (c) no interest shall be payable for any period of delay to the extent caused by the conduct of the other (non-paying) Party;
- (d) all claims for interest made pursuant to this Clause 14.1.1 shall be promptly notified by the Party claiming interest to the other; and
- (e) any interest pursuant to this Clause 14.1.1 shall not form a part of the Services Payments.

14.1.2 The Services Payments shall constitute the Authority's entire payment liability to the Contractor for the Services and the delivery of the Contractor Deliverables under this Contract.

15 Indemnity

15.1 Upon the Contractor discovering any damage to any property belonging to the Authority (including any Government Furnished Asset(s) or any other property for which the Authority is responsible) and/or receiving notice of a claim by a third party for damage caused or contributed to by the Contractor and/or any Contractor Related Party or Contractor Related Parties, the Contractor's Representative shall, as soon as practicable, notify the Authority's Representative, providing a

record of any relevant details of the damage (including photographs if necessary) and/or third party claim.

- 15.2 The Contractor shall, subject to Clause 15.3, be responsible for, and shall release and indemnify the Authority on demand from and against, any and all Losses suffered or incurred by the Authority arising from any incident or incidents of:

- (a) death or personal injury; or
- (b) any loss of, or any damage to, any property belonging to either a third party or the Authority (including Issued Property, Articles or any other property for which the Authority is responsible); but excluding damage to government property which qualifies for compensation under clause 3 of DEFCON 76 (Edn 11/22);

which has or have been caused or contributed to by the Contractor and/or any Contractor Related Party or Contractor Related Parties.

- 15.3 The Contractor shall not be responsible or be obliged to indemnify the Authority under Clause 15.2:

- (a) for any matter referred to in Clauses 15.2 which arises as a direct result of the Contractor acting on a written notice issued by the Authority's Representative (the Contractor having first notified the Authority's Representative of the reasonably foreseeable likely risk at the time of receipt of the written notice); and/or
- (b) under Clause 15.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority, any Authority Related Party or by the breach of the Authority of its obligations under this Contract.

16 Step-In Rights

In this Clause 16 references to the Authority taking action shall be deemed to include references to the Authority procuring the taking of action by others on behalf of the Authority (and the Authority's rights under this Clause 16 shall be construed accordingly).

16.1 Grounds for Authority Step-In

- 16.1.1 Subject to Clause 16.2.1, if the Authority:

- (a) **is entitled to terminate this Contract in accordance with Clause 19.3.1; and/or**
- (b) **needs to take action in connection with the Services because a breach of the Contractor's obligations under this Contract would create an immediate and/or serious threat to the business and operational effectiveness of the Authority; and/or**
- (c) **reasonably considers that it needs to take action in connection with the Services and/or this Contract:**
 - (i) **because the Contractor has failed to discharge its obligations provided in DEFCON 611 (Edn. 02/16) and/or DEFCON 694 (Edn. 07/21) which poses a risk to the Issued Property; and/or**

- (ii) **because a serious risk exists to the health or safety of persons or property or to the environment; and/or**
- (iii) **to discharge a statutory duty; and/or**
- (iv) **a Force Majeure Event occurs which prevents or delays the performance of the Services or any part of the Services; and/or**
- (v) **on the occurrence of an urgent operational requirement; and/or**
- (vi) **on being advised by a Regulatory Body that the exercise by the Authority of its rights under this Clause 16 (*Step-in Rights*) is necessary,**

then the Authority shall be entitled to take action in accordance with this Clause 16.

16.2 Procedure for Authority Step-In

- 16.2.1 Where the Authority is entitled to take action pursuant to Clause 16.1.1(c)(i), the Authority shall take steps to consult with the Contractor to evaluate any alternative reasonable proposal or proposals the Contractor may have to resolve the relevant event or circumstance without the need for the relevant Step-In (but only if the Authority acting reasonably considers that the Contractor has the capacity to resolve the event or circumstance satisfactorily) before commencing the notice procedure described in Clause 16.2.2.
- 16.2.2 Subject to Clause 16.2.1, if Clause 16.1.1 (Grounds for Authority Step-In) applies and the Authority wishes to take action, the Authority's Representative shall notify (the **Step-In Notice**) the Contractor Representative of the following:
- (a) **the action the Authority wishes to take;**
 - (b) **the reason for such action;**
 - (c) **the date it wishes to commence such action;**
 - (d) **the time period which it believes shall be necessary for such action, subject always to a maximum period of 6 months or such other period as the Parties may agree; and**
 - (e) **to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.**
- 16.2.3 Following service of a Step-In Notice, the Authority shall take such action as notified under Clause 16.2.2 (the **Required Action**) and any consequential additional action as it reasonably believes is necessary to achieve the Required Action and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.
- 16.2.4 Without prejudice to the rights of the Authority otherwise acquired and to the extent the Contractor is entitled to do so, the Contractor hereby grants to the Authority a royalty-free licence to use and have used any Management Information and such Technical Information which the Authority demonstrates is/are reasonably required for the purpose of remedying the events or circumstances giving rise to the Required Action under Clause 16.1.1 (Grounds for Authority Step-

In). The Contractor shall ensure that it provides for such rights to use such Management Information and Technical Information in any Sub-Contract.

16.3 Effect of Step-In Without Breach

16.3.1 If the Authority exercises its right to take action in connection with the Services and/or this Contract pursuant to Clause 16.1.1 for reasons **not** arising out of any breach or breaches by the Contractor of any of its obligations provided in this Contract:

- (a) **then for so long as and to the extent that the Required Action is taken and this prevents the Contractor from providing all or any part of the Services, the Contractor shall suspend provision of, and be relieved of its obligation to provide, those Services;**
- (b) **in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Services Payments due to the Contractor in respect of the Services affected by the Required Action shall equal the amount the Contractor would have received if the Services affected by the Required Action were being provided in accordance with this Contract as set out at Annex G (Contract Payment Plan) provided that the Contractor shall not be entitled to payment of any Performance Element Amount in respect of those Services pursuant to which the Authority has exercised its rights under Clause 16.1.**

16.4 Effects of Step-In Following Breach

16.4.1 If the Contractor is in breach of its obligations under this Contract and as a consequence the Authority exercises its right to take action in connection with the Services and/or this Contract pursuant to Clause 16.1.1:

- (a) **the Contractor shall not be entitled to any Performance Element Amount during the Period of Required Action in respect of those Services pursuant to which the Authority has exercised its rights under Clause 16.1;**
- (b) **the Authority shall only be required to pay by way of substitute for the Monthly Core Price Instalment during the period of the Required Action an amount equal to (A - B), where: A = (n/30) x the relevant Monthly Core Price Instalment amount(s) identified immediately above applicable to the month(s) in which the Required Action takes place, where n = the aggregate period of time measured in days before (and not including) the day on which the Required Action commences and after (but not including) Step-Out (as defined in Clause 16.5.1) and such Monthly Core Price Instalment shall be adjusted in accordance with clause 11.5 (Calculation of Variation of Core Price); and**

B = an amount equal to the Authority's reasonable and properly incurred costs of taking the Required Action; and
- (c) **then for so long as and to the extent that the Required Action is taken and this prevents the Contractor from providing all or any part of the Services, the Contractor shall suspend provision of, and be relieved of its obligation to provide, those Services to the extent that they are the subject of the Required Action and such suspension of the**

Services as described in this Clause 16.4.1(c) shall be without prejudice to the Authority's other rights (including in relation to termination);

- (d) nothing in this Clause 16.4.1 shall operate to affect the Contractor's entitlement to claim a Performance Element Amount: (a) in connection with any Services that are **not** the subject of the Required Action or (b) to the extent relating to the attainment of the applicable Performance Levels prior to commencement of the Required Action or following Step-Out subject to Clause 16.5.3.

16.5 Authority Step-Out

16.5.1 The Authority's Representative may at any time during the period of the Required Action notify the Contractor's Representative that the Authority wishes to cease the Required Action (**Step-Out**) and the date on which it wishes to do so.

16.5.2 On receipt of the notice referred to in Clause 16.5.1 the Parties shall (acting reasonably) jointly agree the date by which the Authority shall step out and the Contractor resume delivery of the Services, and the method by which the Parties shall do so.

16.5.3 Following Step-Out:

- (a) **if and to the extent that the Authority shall have committed any negligent act during the period of the Required Action, which as a direct result adversely affects the ability of the Contractor to perform and deliver the Services in accordance with the provisions of this Contract on Step-Out, the Contractor may (as its sole remedy in respect of such negligent act) claim that a Relief Event has occurred and both Parties shall comply with its respective obligations provided in Clause 17 in relation to such occurrence; and**
- (b) **the Contractor shall resume the provision of, and the Authority shall no longer be responsible for, all or any part of the Services which was the subject of the Required Action.**

16.5.4 The Contractor shall bear its own costs with the provision of reasonable assistance for any Required Action taken by the Authority.

16.5.5 The exercise by the Authority of any Required Action under this Clause 16 (*Step-In*) shall be without prejudice to the Authority's other rights (including in relation to termination and in respect of the Contractor's obligations provided in Clause 15) under this Contract.

17 Relief Events

17.1 If and to the extent that a Relief Event occurs and is the direct cause of a failure of the Contractor to perform any of its obligations provided in this Contract (and for the avoidance of doubt, the Contractor has not exercised its rights under Clause 13.2.2), then, subject to its compliance with its respective obligations provided in this Clause 17, the Contractor shall be entitled to apply for:

- (a) relief from the Authority's right to terminate this Contract under Clause 19.3.1(a) for any reason arising directly from the occurrence of the relevant Relief Event;

- (b) where the Contractor believes they can continue to provide the Services subject to the Relief Event by way of modifying its provision, to apply for a Contract Change;
- (c) payment of any Performance Element Amounts shall be in accordance with Clause 17.5.

17.2 Procedure for Claims

17.2.1 In order to obtain such relief, the Contractor shall at no additional cost, charge and/or expense to the Authority:

- (a) as soon as practicable, and in any event within 5 (five) Business Days, after the Contractor becomes aware that the occurrence of the relevant Relief Event notify the Authority's Representative to such effect of the nature of the event, and within a further 5 (five) Business Days (or such alternative period agreed between the Parties (acting reasonably)), provide in writing to the Authority's Representative full details of the relevant event;
- (b) if the Authority (acting reasonably) notifies the Contractor that the Authority accepts the Contractor's claim that such event constitutes a Relief Event:
 - (i) within 5 (five) Business Days after the date on which the Authority serves such notice the Contractor shall:
 - (A) notify the Authority's Representative of the relief claimed; and
 - (B) demonstrate to the reasonable satisfaction of the Authority:
 - 1) the need for relief from the operation of Clause 13.1; and
 - 2) that the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor and/or any Contractor Related Party acting in accordance with Good Industry Practice, without incurring additional expenditure; and
 - 3) that the Contractor is using reasonable endeavours to perform its obligations under this Contract; and
 - (ii) the Contractor shall notify the Authority's Representative, if at any time the Contractor receives or becomes aware of any further information relating to the occurrence of the relevant Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted inaccurate or misleading.

17.2.2 If the Contractor has complied with its obligations under Clause 17.2.1:

- (a) the occurrence of a Bronze rating(s) arising directly and solely from the relevant Relief Event shall not constitute (or, in respect of limb (k) of the definition of Contractor Default, count towards) a Contractor Default and the Authority shall not be entitled to exercise its right to terminate this Contract under Clause 19.3.1(a) for any reason directly arising out

of the relevant Relief Event during the period in which a Relief Event subsists (the **RE Relief Period**); and

- (b) during the RE Relief Period, in respect of any RE Affected Services, Clause 17.5 in respect of any impacted Performance Element Amount;
- (c) the Authority shall not be entitled to exercise its right to terminate this Contract under Clause 19 (*Termination*) for any reason directly arising out of the relevant Relief Event; and
- (d) the Parties reserve the right to consider whether a Contract Change is necessary to rectify any Relief Event such as to prevent or mitigate the likelihood of an event of the same or similar nature re-occurring in the future.

17.3 Late Provision of Notice or Information

If the information required by Clause 17.2.1 is provided after the dates referred to in that Clause (or such alternative period agreed between the Parties acting reasonably), then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

17.4 Failure to Agree

If the Parties cannot agree the extent of the relief required, or the Authority either (i) disagrees that a Relief Event has occurred (and such determination is contested by the Contractor) or (ii) has not reached any determination within 20 (twenty) Business Days after (and including) the date on which the Authority is first notified of the occurrence of the relevant event pursuant to this Clause 17, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure engaging any additional technical assistance, as required, to resolve the dispute.

17.5 Payment of Performance Element Amount during Relief Events

17.5.1 Where RE Affected Services are of an extent that the Contractor is unable to report performance against a relevant KPI under Annex B (*Key Performance Measuring, Monitoring and Reporting*) and as such is unable to have the potential to achieve an entitlement to PEA (**RE Impacted PEA Event**), the Authority shall begin withholding the PEA for the Calendar Month in which such Calendar Month in which such reporting failure first occurred and shall only release such PEA in accordance with the following:

- (a) where the RE Affected Services result in an RE Impacted PEA Event and the relevant Relief Period covers part of a Calendar Month provided that a GOLD rating in respect of the KPI has been determined for the periods within a Calendar Month that performance was possible, the Contractor may invoice for and be paid the relevant PEA following such determination:
- (b) where the RE Affected Services result in an RE Impacted PEA Event and the relevant Relief Period relate to a continuous period of more than one (1) Calendar Month but less than three (3) Calendar Months:
 - (i) provided that performance was possible and a GOLD rating is determined to have applied in respect of that performance for a period of six (6) days or more, the Contractor may invoice for and be paid all withheld PEA following such determination; or

- (ii) where performance was possible and a GOLD rating is determined to have applied in respect of that performance for a period of five (5) days or less, provided that the Contractor's performance for the next full Calendar Month is determined to be GOLD, the Contractor may invoice for and be paid all withheld PEA following such determination;
- (c) where the RE Affected Services result in RE Impacted PEA Event and: (i) the relevant Relief Period has subsisted for a continuous period of three (3) Calendar Months; and (ii) and the Authority has therefore withheld three (3) Calendar Months of PEA, where the RE Impacted PEA Event continues into the fourth, fifth and sixth Calendar Months:
 - (i) if, following determination in each of those Calendar Months that such RE Impacted PEA Event is continuing, the Contractor may invoice for and be paid an amount of PEA equal to earliest Calendar Months' equivalent PEA currently withheld by the Authority and the same shall apply in relation to Calendar Months five and six such that the Authority is never withholding more than three Calendar Months of PEA in respect of a KPI at a time; or
 - (ii) if the RE Impacted PEA Event ends in any of the fourth, fifth or sixth Calendar Months:
 - (A) provided that performance was possible and a GOLD rating is determined to have applied in respect of that performance for a period of six (6) days or more in the fourth, fifth or sixth Calendar Month, the Contractor may invoice for and be paid following such determination an amount equal to the three months of PEA currently withheld by the Authority; or
 - (B) where performance was possible and a GOLD rating is determined to have applied in respect of that performance for a period of five (5) days or less, provided that the Contractor's performance for the next full Calendar Month is determined to be GOLD, the Contractor may invoice for and be paid following such determination an amount equal to the three months of PEA currently withheld by the Authority.
- (d) If an RE Impacted PEA Event subsists for a continuous period of more than six (6) Calendar Months, the Authority shall release any withheld PEA to the Contractor and as soon as reasonably practicable senior representatives of the Parties will meet in order to determine whether (i) any resolution of the Relief Event is likely; and (ii) what amendments and changes may be necessary to the Contract including Clause 13, Annex A and Annex B.

17.6 Sole Remedy

This Clause 17 and the Contractor's rights and remedies provided in this Clause 17 constitute the Contractor's sole remedy in relation to the occurrence of a Relief Event.

18 Force Majeure Events

- 18.1 On the occurrence of a Force Majeure Event the Affected Party shall notify the other Party to such effect as soon as practicable. Furthermore, if either reasonably anticipates the occurrence of a

Force Majeure Event, it shall notify the other Party to such effect as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of each or the Affected Party or (in the case of an anticipated Force Majeure Event) each or the likely Affected Party and any action proposed to mitigate its effect.

- 18.2 As soon as practicable following such notification the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 18.3 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Parties shall at all times during which the Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 18.4 Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses (whatsoever) or damages incurred by that other Party to the extent a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event.
- 18.5 Subject to the operation of Clause 18.7.2(a) (which shall only apply in the circumstances identified in Clause 18.7.2 and not otherwise):
- (a) where the Contractor is the Affected Party the occurrence of a Bronze rating or Bronze ratings arising directly and solely to the occurrence of the relevant Force Majeure Event or Force Majeure Events shall not constitute (or, in respect of limb (k) of the definition of Default, count towards) a Default and the Authority shall not be entitled to terminate this Contract pursuant to Clause 19.3.1 for any reason directly arising out of the relevant Force Majeure Event or Force Majeure Events during the period commencing on the date of its or their occurrence and terminating at 17:00 (London time) on the 60th (sixtieth) Business Day (or such alternative period agreed between the Parties (acting reasonably)) after and including such commencement date (the **FM Relief Period**) provided that:
- (i) the Contractor shall have complied with and continues to comply with its obligations pursuant to Clauses 18.1, 18.2 and 18.3; and
- (ii) during the FM Relief Period, in respect of any FM Affected Services, Clause 13.2.1 applies such that the Contractor shall not be entitled to any Performance Element Amount; and
- (iii) any failure or delay by the Contractor in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor; and
- (iv) the Contractor shall not be entitled to claim relief under this Clause 18.5 to the extent that consequences of the relevant Force Majeure Event:
- (A) are capable of being mitigated by the Contractor using all reasonable endeavours, but the Contractor has failed to do so;

- (B) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract, but excluding where the Contractor did in the opinion of the Authority acting reasonably make reasonable provision to avoid or prevent such Force Majeure Event based upon what could reasonably be foreseen but such provision failed;
 - (C) are the result of the Contractor's failure to comply with its remedial plan in accordance with Clause 13.2 (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of such remedial plan); and
 - (b) nothing in this Clause 18.5 shall operate to affect the Contractor's entitlement to claim any applicable Performance Element Amount under Clause 13.4.1:
 - (i) where and to the extent that the Contractor's delivery of any Services is not affected by the Force Majeure Event or Force Majeure Events; or
 - (ii) to the extent relating to the attainment of the required Performance Levels prior to the commencement of or after the end of such period as is set out in Clause 13.4.1.
- 18.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 18.7 Termination or Partial Termination on the basis of (a) Force Majeure Event(s)**
- 18.7.1 If no terms pursuant to Clause 18.2 are agreed on or before the date falling 80 (eighty) Business Days after the date of the commencement of the Force Majeure Event(s) and such Force Majeure Event(s) is/are continuing or its/their consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than 120 (one hundred and twenty) Business Days, then either Party (the **Notifying Party**) may give the other Party's Representative no less than 20 (twenty) Business Days' written notice (such written notice period being the **FM Period**) that the Notifying Party wishes this Contract to terminate in part in respect of any FM Affected Services on the basis of the occurrence of such Force Majeure Event(s) at the end of the FM Period.
- 18.7.2 If the Contractor gives notice to the Authority's Representative under Clause 18.7.1 that the Contractor wishes to terminate any FM Affected Services, then the Authority has the option either to accept such termination or to respond in writing on or before the date falling 10 (ten) Business Days after the date of its receipt stating that it requires this Contract or any FM Affected Services to continue. If the Authority gives the Contractor such notice of continuance, then:
- (a) Clause 18.5 shall cease to apply and the Authority shall pay to the Contractor the Services Payments from the date on which any FM Affected Services would have terminated under Clause 18.7.1, but the Contractor shall not be entitled to any Performance Element Amount (save that, where and to the extent the Contractor's delivery of any Services is not affected by the Force Majeure Event(s), nothing in this Clause (a) shall operate to affect

the Contractor's entitlement to claim any applicable Performance Element Amount in the period during which the Force Majeure Event is subsisting); and

- (b) the Contract shall not terminate on the basis of the occurrence of such Force Majeure Event(s).

18.7.3 If:

- (a) the Contractor gives notice to the Authority's Representative under Clause 18.7.1 that the Contractor wishes any FM Affected Services to terminate on the basis of the occurrence of such Force Majeure Event(s) and the Authority accepts such termination in writing; or
- (b) the Authority gives the Contractor's Representative no less than 20 (twenty) Business Days' written notice that the Authority wishes any FM Affected Services to terminate on the basis of the occurrence of such Force Majeure Event(s),
- (c) any FM Affected Services shall terminate on such basis at the end of the relevant notice's FM Period.

18.8 Financial Consequences of Termination for a prolonged Force Majeure Event

Where the Authority terminates any FM Affected Services pursuant to this Clause 18, the Contractor shall only be entitled to be paid (to the extent not already recovered) an amount equal to those Services Payments (subject to any other provision of the Contract affecting the level of such payment) for those Services and Contract Deliverables which it has, as at the Termination Date, provided to the Authority in accordance with the provisions of this Contract minus any amount(s) due and owing, but remaining unpaid, by the Contractor to the Authority pursuant to this Contract (and the Contractor hereby acknowledges and agrees that where any such amount so due and owing to the Authority exceeds the amount of those Services Payments, the Contractor shall pay to the Authority an amount equal to such excess on or before the Termination Date). The Contractor shall not be entitled to any other amount in connection with such termination.

18.9 Dispute Resolution

Either Party may refer to the Dispute Resolution Procedure any matter arising from the operation of this Clause 18 for resolution.

19 Contract Termination (other than a Force Majeure Event based termination)

19.1 The Authority shall be entitled to terminate this Contract in accordance with:

- (a) **Clause 19.2; and/or**
- (b) **Clause 19.3.1.**

19.2 Break (Voluntary Termination by the Authority)

The Authority shall be entitled to terminate this Contract pursuant to DEFCON 656B (Edn 08/16) and the notice period referred to in clause 1 of DEFCON 656B (Edn 08/16) shall be 6 (six) months.

19.3 Fault Based / Insolvency Based Termination

19.3.1 The Authority shall be entitled to terminate the whole or any part of this Contract by giving notice in writing to the Contractor if any one or more of the following events happens:

- (a) **subject to Clauses 19.4.1 to 19.4.3 (inclusive)(Rectification) if the Contractor commits a Contractor Default; and/or**
- (b) **the Authority is entitled to terminate pursuant to:**
 - (i) **DEFCON 515 (Edn 06/21) (Bankruptcy and Insolvency);**
 - (ii) **DEFCON 520 (Edn 08/21) (Corrupt Gifts and Payments of Commission);**
 - (iii) **DEFCON 659A (Edn 09/21) (Security Measures); and/or**
 - (iv) **DEFCON 660 (Edn 12/15) (Official-Sensitive Security Requirements).**

19.3.2 If the Authority wishes to terminate the whole or any part of this Contract pursuant to Clause 19.3.1, it must serve a notice on the Contractor stating:

- (a) **that the Authority is terminating the Contract pursuant to Clause 19.3.1; and**
- (b) **the ground(s) for termination, giving reasonable details; and**
- (c) **that the Contract shall:**
 - (i) in the case of a Contractor Default by the Contractor arising under limbs (d), (e), (f), (g), (h), (i), (k), (l), (m), and Clause 19.3.2, terminate with immediate effect; or
 - (ii) **in the case of a Contractor Default by the Contractor arising under limbs (a), (b), (c) or (j) (subject to Clauses 19.4.1 to 19.4.3 (Rectification)) terminate on the day falling 30 (thirty) Business Days after the date the Contractor receives the Termination Notice.**

19.4 Rectification

19.4.1 If the Contractor commits a Contractor Default (other than a Persistent Breach or a Contractor Default identified in limbs (f), (g) or (h) of the definition of that term provided in Clause 3) and upon receipt of the Authority's notice issued in accordance with Clause 19.3.2 such breach is capable of being rectified or remedied, the Contractor shall, in consultation with the Authority, have the opportunity to set out within 5 (five) Business Days after the date of the Authority's notice (or such alternative period agreed between the Parties acting reasonably) how the Contractor intends to remedy such a breach (such proposal to be reasonably acceptable to the Authority).

19.4.2 If no such proposal for rectification reasonably acceptable to the Authority is received by the Authority within 5 (five) Business Days after the date of the Authority's Termination Notice (or such alternative period agreed between the Parties acting reasonably) , then the Authority may terminate this Contract in accordance with Clause 19.1.

19.4.3 If a proposal for rectification reasonably acceptable to the Authority is received by the Authority within 5 (five) Business Days after the date of the Authority's Termination Notice (or such

alternative period agreed between the Parties acting reasonably) , the Contractor shall remedy the relevant Contractor Default within 30 (thirty) Business Days after the date of the Authority's Termination Notice (or such other period which is agreed by the Parties in accordance with the rectification proposal pursuant to Clause 19.4.1). At the expiry of that period:

- (a) if the Contractor has failed to rectify, or cause to be rectified, the Contractor Default to the satisfaction of the Authority, then the Authority may terminate this Contract in accordance with Clause 19.1; or
- (b) if the Contractor has rectified, or has caused to be rectified, the Contractor Default to the satisfaction of the Authority, then the Authority shall issue a notice to such effect, whereupon the Authority's Termination Notice in respect of the relevant Default alone shall be deemed withdrawn.

19.5 Persistent Breach

19.5.1 If a particular breach by the Contractor of this Contract has continued for more than 60 (sixty) Business Days or occurred more than 3 (three) times in any 3 (three) month period, then the Authority's Representative may serve a notice on the Contractor:

- (a) **specifying that it is a formal warning notice; and**
- (b) **giving reasonable details of the breach; and**
- (c) **stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.**

19.5.2 If, following service of such a warning notice the breach specified has continued beyond 30 (thirty) days or recurred in 1 (one) or more months within the 6 (six) month period after the date of service, then the Authority's Representative may serve another notice (a **Final Warning Notice**) on the Contractor's Representative:

- (a) **specifying that it is a Final Warning Notice; and**
- (b) **stating that the breach specified has been the subject of a warning notice served within the 6 (six) month period prior to the date of service of the Final Warning Notice; and**
- (c) **stating that, if such breach continues for more than 30 (thirty) days or recurs in 1 (one) or more months within the 6 (six) month period after the date of service of the Final Warning Notice, this Contract may be terminated.**

19.5.3 A warning notice may not be served in respect of any incident of breach which has previously been counted in the award of a separate warning notice.

19.5.4 If the breach continues for more than 30 (thirty) days or recurs in 1 (one) or more months within the 6 (six) month period after the date of service of the Final Warning Notice, it shall constitute a **Persistent Breach**).

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

19.6.1 Where this Contract is terminated in full pursuant to Clause 19.3.1:

(a) **the Contractor shall be entitled to claim an amount equal to those unpaid Services Payments for the Services and the Contract Deliverables provided to the Authority up to the Termination Date; and**

(b) **subject to the limitation of liability provided in Clause 61.3.1(a) the Authority shall be entitled to claim, and the Contractor shall pay on or after the Termination Date, an amount calculated in accordance with the following formula:**

A plus B

Where:

A = the aggregate of all Termination Costs; and

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

(c) **where the amount calculated under Clause 19.6.1(a) exceeds the amount calculated, determined or otherwise assessed under Clause 19.6.1(b), the Authority shall pay to the Contractor an amount equal to the balance on or after the Termination Date; and**

(d) where the amount calculated, determined or otherwise assessed under Clause 19.6.1(b) exceeds the amount calculated under Clause 19.6.1(a), the Contractor shall pay to the Authority an amount equal to the balance on the Termination Date.

19.6.2 Any and all payments due under this Clause 19.6 shall fall due and be payable within thirty (30) days on receipt of valid invoice.

19.6.3 In the event of termination or expiry of this Contract, the Contractor shall repay to the Authority all Services Payments it has been paid in advance in respect of Services not provided by the Contractor as at the date of expiry or termination and for the avoidance of doubt this shall not contribute towards any limitation of liability provided in Clause 61.3.1.

20 Transfer Regulations

20.1 The Parties shall comply with and give effect to the provisions of Annex AB (*Transfer Regulations*) provided that compliance of the Contractor with paragraphs 2.1, 2.2 and 2.6 of Annex AB (*Transfer Regulations*) shall be subject to agreement of a fair and reasonable price for such services in accordance with Clause 20.2 and the references in paragraphs 2.1, 2.2 and 2.6 of Annex AB (*Transfer Regulations*) to responding to any Authority request or requests shall be construed as to mean following agreement of such fair and reasonable price in connection with each of such requests.

20.2 If (acting in its sole discretion) the Authority wishes to require the Contractor to perform any of the services under paragraphs 2.1, 2.2 and 2.6 of Annex AB (*Transfer Regulations*):

(a) **the Authority shall complete and issue to the Contractor a completed Part A of the TAF in respect of such services; and**

- (b) **the Parties shall comply with Clause 9 (*Additional Services and Change Governance*) in connection with such TAF.**

21 Exit Management

The Parties shall comply with and give effect to the provisions of Annex S (*Exit Management*) including compliance with the prevailing Exit Management Plan as agreed between the Parties (acting reasonably).

22 Continuing Obligations

22.1 Save as otherwise provided for in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract:

- (a) **termination or expiry of this Contract shall be without prejudice to any accrued rights and obligations prior to termination or expiry; and**
- (b) **termination of this Contract shall not affect the continuing rights and obligations of the Parties under:**
 - (i) **Clauses 3 (*Definitions and Interpretation*), 4 (*Order of Precedence*), 7.2 (*Duration*), 11 (*Pricing & Instalments*), 16 (*Step-In Rights*), 19 (*Contract Termination (Other than a Force Majeure based Termination)*), 20 (*Transfer Regulations*), 21 (*Exit Management*), 22 (*Continuing Obligations*), 26.7 (*Quality Records*), 34 (*Risk Plan/Assessment*), 41 (*Access, Audit and Inspection*), 42 (*Intellectual Property Rights*), 43.8 (*Facilities*), 44 (*Licences*), 46 (*Dispute Resolution*), 61 (*Limitation of Liability*) and 66 (*Entire Agreement*);**
 - (ii) **DEFCONS 14 (*Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs*), 15 (*Design Rights and Rights to Use Design Information*), 16 (*Repair and Maintenance Information*), 21 (*Retention of Records*), 90 (*Copyright*), 91 (*Intellectual Property Rights in Software*), 126 (*International Collaboration*), 530 (*Dispute Resolution (English Law)*), 531 (*Disclosure of Information*), 532B (*Protection Of Personal Data*), 538 (*Severability*), 632 (*Third Party Intellectual Property - Rights and Restrictions*), 659A (*Security Measures*), 660 (*Official-Sensitive Security Requirements*), , 800 (*Qualifying Defence Contract*), 804 (*QDC: Confidentiality of Single Source Contract Regulations Information*);**
 - (iii) **Annexes G (*Contract Payment Plan*), R (*Business Tenancy Agreements*), S (*Exit Management*), AB (*Transfer Regulations*), AE (*DEFFORM 532 (Personal Data Particulars)*) and AF (*DEFFORM 539A (Contractor Commercially Sensitive Information)*); and**
 - (iv) **any other provision of this Contract which is expressed to survive termination or expiry or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.**

23 Financial Distress

The Contractor shall comply with the provisions of Annex H (*Financial Distress*).

24 Parent Company Guarantee

- 24.1 A signed Parent Company Guarantee (**PCG**), in the format set out at Annex T (*Parent Company Guarantee*) to this Contract, shall be provided by Thales SA to the Authority in accordance with Clause 5.1.1. Once provided a copy of the PCG shall be attached to this Contract.
- 24.2 The Parties acknowledge and agree that the Authority shall be under no obligation to make any payments under the Contract until the Contractor has delivered a signed Parent Company Guarantee in the format set out at Annex T (*Parent Company Guarantee*).
- 24.3 A valid PCG maintained in accordance with its terms is a requirement for this Contract. Without limitation to the operation of Clauses 19.1(b) and 19.3.1, where there is a Change of Control of the Holding Company providing the PCG or a Financial Distress Event occurs in relation to the Parent, the Contractor shall procure a new PCG in the same form as that in Annex T (*Parent Company Guarantee*) from a guarantor or alternative Parent meeting the requirements of Paragraph 2.1 of Annex H (*Financial Distress*), or as otherwise agreed by the Authority, such guarantee to be provided within 3 (three) months after the said change. Upon provision of the new guarantee the Authority shall discharge the previous guarantor from its obligations under the replaced PCG.

25 Spares and Repairs

The Contractor shall be responsible for the management of all spares and repair items in accordance with the processes and requirements laid out in the Asset Management Plan detailed at Annex E (*Deliverable Documentation*). Articles for repair shall be issued to the Contractor as GFA in accordance with Clause 43 (*Government Furnished Assets*).

25.1 Packaging and Marking

- 25.1.1 Packaging and marking of the items shall be in accordance with DEFCON 129 (Edn 02/22).
- 25.1.2 Unless otherwise directed by the Authority in writing, the Contractor shall, if practicable, mark each Article and its packaging clearly and indelibly in accordance with the requirements of the relevant drawings, MOD Stock Reference and Drawing/Specification Numbers. The outer packaging must show the Management Code(s) (Class Group(s)) of the Article.

25.2 Delivery

- 25.2.1 Articles shall be delivered to the Authority's RN (Royal Naval) store depot or other destination as instructed in accordance with Box 9 of DEFFORM 111.
- 25.2.2 Where any Article to be supplied under this Contract is to be delivered otherwise than being handed over by the Contractor to the Authority, including where an Article is to be delivered by the Contractor at its own premises or at the premises of a Sub-Contractor ('self-to-self delivery') the risk in such Article shall (notwithstanding the provision of DEFCON 612 (Edn 06/21) remain vested in the Contractor until such time as the Article is handed over to the Authority.

25.3 Standard of Repair

- 25.3.1 All repairs are to be carried out to a Serviceable Not New Standard. In this respect, the physical and cosmetic appearance of the Articles are not required to be "as new" provided that serviceability is not affected. All repairs carried out or to be carried out pursuant to the Asset

Management Plan shall also conform in all respects to the standards and performance specifications contained in the relevant equipment drawings and test specification documents observing the quality standards stipulated at Clause 26.

- 25.3.2 Other deviations from the repair standard defined at Clause 25.3.1 shall be dealt with pursuant to the procedures as defined in DEF STAN 05-61 Part 1. Any additional work required as a result of such requirements shall be undertaken at a price to be agreed between the Authority and the Contractor.

26 Quality Requirements

- 26.1 The Contractor shall comply with and give effect to Annex D of the Contract (Codes and Standards and to any other Codes and Standards which come into force during the Contract Term. During the Contract Term the Contractor shall review all Codes and Standards which are re-issued, updated or amended in order to report upon the value each such Code or Standard brings to the performance of this Contract (including all or any Services). An update to or amendment to any of the Codes and / or Standards after the Effective Date amounting in each or any such case to a change in the scope of the Contractor Deliverables shall be agreed by the Parties pursuant to the Contract Change Procedure. For the avoidance of doubt any Change in Law or Regulation is expressly excluded from this Clause 26.1.
- 26.2 For the purposes of this Contract, it is a requirement that the Contractor shall adopt and maintain a quality management system which has been assessed and certificated by a United Kingdom Accreditation Service (UKAS) accredited Third Party certification body as conforming to the requirements of ISO 9001:2015, any update to ISO 9001:2015 or any equivalent standard which is generally recognised as having replaced it. In the event of the Contractor's ISO certification lapsing, it shall notify the Authority's Commercial Branch immediately to such effect.
- 26.3 A Deliverable Quality Plan specific to the Contractor's operations under this Contract is required in accordance with AQAP 2105 Edition 2 and DEFCON 602A. The Deliverable Quality Plan shall be submitted or acceptance within 4 (four) months after the Effective Date. Once such plan has been approved by the Authority, it shall be incorporated into the Contract. The Contractor shall be solely responsible for the accuracy, suitability and applicability of such plan.
- 26.4 Acceptance of the Contractor's Deliverable Quality Plan only signifies acknowledgement of the Contractor's contractual intention and it will only be amended by mutual agreement between the Parties in accordance with the Contract Change Procedure. The Contractor acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Deliverable Quality Plan and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 26.5 If a significant development is contracted through this Contract, then the Contractor shall comply with AQAP 2210 Edn A ver2 (NATO Supplementary Software QA Requirements) in so far as developing and maintaining an Electronic Component Management Plan (ECMP) or Software Project Quality Plan (SPQP).
- 26.6 DEF STAN 05-61 Part 1 Iss. 6 - Quality Assurance Procedural Requirements - Concession**
- 26.6.1 Not used.

26.6.2 If a Contractor proposes to deliver, or embody, a non-conforming product, no such delivery or embodiment is to take place until such time as the Authority's Representative has received and agreed a Concession in accordance with the requirements of DEF STAN 05-61 (Part 1).

26.6.3 Any Concession applications raised under this Contract shall be routed through the Authority's Commercial Branch.

26.7 Quality Records

Unless otherwise directed in this Contract, the Contractor shall retain quality control/inspection records or such of those records as may be agreed by the Authority, for a period of 10 (ten) years from completion of all work under this Contract and shall make them accessible to the Authority on request. At the end of the retention period the Contractor shall seek advice from the Authority regarding the disposal/continued retention of the quality control/inspection records and the Contractor shall not dispose of such records without the written authority of the Authority. Exceptionally, when requested by the Contractor, earlier disposal may be authorised in writing by the Authority.

26.8 Quality Assurance Authority (QAA)/Representative (QAR)/Project Officer (PQAO)

All references to the Ministry of Defence (MoD) or Authority QAA/QAR/PQAO in documents which form part of this Contract shall be read as referring to the Authority's Project Manager or his authorised representative on quality assurance matters in connection with this Contract.

27 Obsolescence Management

The Contractor shall perform and discharge over the entire Contract Term Obsolescence Management in accordance with the Equipment Support Strategy Paper, reference **[Information Redacted]** provided at Annex A9 of Annex A (*Statement of Requirement*) to this Contract.

28 Health and Safety

28.1 General

28.1.1 The Contractor shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy of the relevant Government Establishment at which Services are performed such policy being available on request by the Contractor from the Authority.

28.1.2 Not Used

28.1.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the relevant [Government Establishment] of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Contractor shall instruct [Contractor Personnel] to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

28.2 Sharing health and safety information

28.2.1 The Contractor shall promptly report to the relevant Officer in Charge any of the following matters arising out of the performance of this Contract:

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 1995 (**RIDDOR**) to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (for example, the Health and Safety Executive or Local Authority); or

- (a) the receipt by the Contractor of any statutory or regulatory notice from any Health and Safety Authority or Defence Authority asserting any material breach of Health and Safety Law or health and safety requirement.

28.3 Health And Safety Hazard Control

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

- (a) the Contractor shall notify the Officer in Charge or the site project liaison officer or the Authority Representative of:
 - (i) any health and safety hazards associated with the work to be performed by the Contractor or any of 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 opinion of the Contractor, ought to be taken by the Authority, in order 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 Contractor Personnel on the Government Establishment;
 - (ii) any foreseeable risks to the health and safety of the Contractor or any of Contractor Personnel, associated with such hazards; and
 - (iii) any precautions to be taken by the Authority as well as any precautions which, in the Authority's opinion, ought to be taken by the Contractor, in order to control such risks;
- (c) the Contractor shall notify 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 Clause 28.3(a);

- (ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 28.3(b); and
 - (iii) the precautions which, in the opinion of the Contractor, ought to be taken by Contractor Personnel in order to control those risks;
- (d) Where applicable the Contractor shall provide the Officer in Charge or the site project liaison officer or the Authority Representative with:
 - (i) copies of those sections of the Contractor's own safety policies and, where appropriate, the safety policies of Sub-Contractors which are relevant to the risks notified under Clause 28.3(a);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by the Contractor-to-Contractor Personnel under Clause 28.3(c); and
- (e) Where applicable 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 Clause 28.3(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 Clause 28.3(c).

28.4 Duty of co-operation and assurance

Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the relevant [Government Establishment] of which it becomes aware and which relate to or arise in connection with the performance of this Contract. Where, in delivering the Services, the Contractor is engaged in operational activities which because of their nature give rise to duties or obligations for the Authority with respect to the safety of those activities, the Contractor shall provide all such assistance, information and co-operation to the Authority as the Authority may require to enable the Authority to discharge those duties or obligations.

28.5 Authority's Health and Safety Officer

The Authority's nominated health and safety overseeing officer for the purposes of this Contract shall be the Authority's Project Manager to whom any matters relating to health and safety shall be addressed. The Contractor shall nominate an individual to liaise with the Authority's overseeing officer in order that all the relevant health and safety information can be exchanged and maintained throughout the life of the Contract. It is the Contractor's responsibility to ensure that information exchanged between the Authority and the Contractor is shared with any Sub-Contractor.

29 Independent Safety Auditors, Advisors and Assessors

The Contractor shall provide access to records, including any Sub-Contractor records, for Contract related purposes and to enable the Authority's appointed independent safety auditor to carry out safety audits and other assessment activities to meet the Authority's safety requirements.

30 Interchangeability

30.1 The Contractor shall ensure that all items which will, as a result of work carried out by the Contractor under this Contract, be incorporated into the operational equipment shall be mechanically and electrically interchangeable with those already in the operational equipment. Any item that is later found not to be interchangeable shall (subject to Clause 30.2) (i) be replaced by the Contractor, and/or, (ii) the Contractor shall carry out any further redesign work deemed by the Authority (acting reasonably) necessary to remedy and rectify in full such issue, with both of such activities being at no additional cost, charge and/or expense to the Authority (the performance of such obligations being within the Core Price).

30.2 Where the Parties determine or it is determined under the Dispute Resolution Procedure that any such non-interchangeability arising **has not arisen out of or in connection with any act, omission, neglect and/or default of the Contractor and/or any Contractor Related Party or any Defect in any Contractor Deliverable or any article or deliverable made to the Authority by the Contractor or any Contractor Related Party under any other contract or arrangement, the Contractor shall be required to do no more in relation to such matter than promptly notify the relevant fault to the Authority and as soon as reasonably practicable provide the Authority with a reasonable profile of** any further redesign work which shall be required to rectify and remedy in full the issue.

31 Magnetic Signature Requirements

Where any Article is supplied to or used on RN Mine Countermeasures Vessels (MCMV), the Contractor shall ensure that the Articles conform to the appropriate Low Magnetic Signature requirements of DEF STAN 02-617.

32 Protection of Equipment from Electrostatic Discharge Damage

32.1 All PECs, modules, sub-assemblies and assemblies containing or comprising components and individual components are defined as Electrostatic Sensitive Devices (ESSDs).

32.2 It is the Authority's policy that protection shall be provided for all electronic equipment deemed to be at risk of damage from electrostatic discharge. Consequently, all Printed Electric Circuits (PECs) and similar electronic modules are considered to be ESSDs.

32.3 The Contractor, to the extent engaged under this Contract in the design, production, testing, repair, servicing and packaging of PECs and/or similar electronic modules or equipment containing the same, shall carry out adequate measures for such protection. The requirements for such protection of ESSDs are outlined in DEF STAN 08-107 Issue 1 and in BS EN 61340-5-1:2000: "Electrostatics – protection of electronic devices from electrostatic phenomena – General requirements".

32.4 The Contractor shall (amongst other things) ensure that any handbook, setting-to-work instructions and other equipment related documents include a "Warning Page" notifying the presence of ESSDs and that this page appears in the Introduction and Maintenance Sections.

32.5 The Contractor shall advise the Authority's Project Manager of any areas where the Contractor fails to be compliant with BS EN 61340-5-1:2000 and to advise of any associated risks.

33 Capability Protection

33.1 The Contractor acknowledges that any export of technology development output before it is fielded by the Authority is unlikely to be approved by the Authority. In some cases, if the appropriate protection has been put in place, the Authority would consider export on a case-by-case basis. This shall be managed through the MOD Form 680 process.

33.2 The Contractor shall keep the Authority fully informed in writing of any potential export opportunities. Further specific export guidance shall be sought by the Contractor, if necessary, from the Authority's Project Manager.

34 Risk Plan/Assessment

The Contractor acknowledges that any risk assessment, which has been, or may be, undertaken between the Parties in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between Parties. The process of risk assessment generally, includes without limitation, the identification of (or failure to identify):

- (a) **particular risks and their impact; and**
- (b) **risk reduction measures, contingency plans and remedial actions**

but shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified remain the risk of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under this Contract. Notwithstanding the foregoing, the Authority accepts responsibility for the risks identified as the Authority's risk, and shares responsibility with the Contractor for the risks identified as joint risk, in the Risk Register. The Contractor accepts responsibility for all risks identified as the Contractor's risk.

35 Not used

36 Continuous Improvement

The Contract shall be continually reviewed by the Contractor for opportunities for improvement in effectiveness and improving value for money. Where any particular areas are highlighted by the Authority the Contractor shall focus on such areas.

37 Environment

- 37.1 The Contractor shall comply with all Environmental Laws which may apply from time to time to the provision of the Services by the Contractor and it shall notify the Authority immediately upon becoming aware of any breach or potential breach of Environmental Laws.
- 37.2 The Contractor shall obtain maintain and comply fully with all Environmental Permits required for the provision of the Services.
- 37.3 The Contractor shall and shall use all reasonable endeavours to procure that its Key Sub-Contractors shall, at all times throughout the provision of the Services, have in place and be certified under a recognised independently audited environmental management system such as ISO14001:2015 or equivalent standard, applied to all aspects of the Services.
- 37.4 The Contractor shall not cause or knowingly permit the presence of any Hazardous Substance in on or under any Government Establishment in circumstances which constitute a breach of Environmental Law or give rise or may give rise to a legal requirement for Remediation.
- 37.5 The Contractor shall not exacerbate, mobilise, disturb, release, or cause to migrate any Hazardous Substances at, on, in, under or from (as the context so requires) any Government Establishment.
- 37.6 The Contractor shall provide to the Authority all such information and documentation in relation to Environmental Matters at any Government Establishments as the Authority may reasonably require from time to time, including in relation to any Environmental Permit, any Hazardous Substance stored or used or any Environmental Matter relevant to the Services.
- 37.7 The Contractor shall not disclose information to any Regulatory Body in relation to any Environmental Matter at or in connection with the provisions of the Services without giving the Authority reasonable notification that it is going to make such a disclosure and obtaining the Authority's written approval for such a disclosure (such approval not to be unreasonably withheld) save for disclosures which are expressly required by Law. The Contractor shall give Notice to the Authority as soon as possible of any disclosures made in accordance with this Clause 37.7.
- 37.8 The Contractor shall notify the Authority immediately of any breach or alleged breach of its obligations or duties under this Clause 37, including any spillage or accident involving the release of Hazardous Substances, and any investigation into or enforcement action taken in respect of any Environmental Matter by a Regulatory Body.
- 37.9 Subject to Clause 37.10 and Clause 61.3.1(d), the Contractor shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with any breach by the Contractor of its obligations and duties contained within this Clause 37.
- 37.10 Save in respect of any breach by the Contractor of Clause 37.5 and without prejudice to the Authority's right to claim against the Contractor or any member of the Contractor's Group in respect of Historic Contamination where it has previously provided services at any Government Establishments pursuant to a separate contract with the Authority, the Contractor shall not under

this Clause 37 assume any responsibility or liability for the Remediation of Historic Contamination.

- 37.11 Any dispute in relation to the liability of the Contractor arising under this Clause 37 will be referred to the Dispute Resolution Procedure.

38 Contract Volume Control

- 38.1 The Contractor recognises that due to budgetary pressures resulting from the Authority's departmental spending reviews, the Authority may need to reduce its contractual expenditure from that agreed at the outset of the Contract and, where applicable, subsequently revised. Under such circumstances both Parties agree to work together to review contract expenditure and, if feasible, implement in-year savings measures to meet the Authority's departmental initiatives.

- 38.2 In the event that a review of its financial commitments under the Contract is necessary, the Authority shall notify the Contractor in writing detailing the nature and objective of the review and shall request the Contractor to submit options to the Authority for reducing in-year commitments which shall have the least impact upon the performance of this Contract whilst meeting the Authority's immediate need to reduce commitments. The Contractor's proposal shall include, but not be limited to, the following information:

- (a) **the affected equipment(s);**
- (b) **the proposed change in activity;**
- (c) **the estimated in-year savings;**
- (d) **the impact on actual costs;**
- (e) **the impact on equipment performance;**
- (f) **the impact on equipment availability / reliability;**
- (g) **the impact on the Contractor's ability to meet the Performance Levels;**
- (h) **any safety implications;**
- (i) **the impact on the supply chain;**
- (j) **the impact on other equipment / projects;**
- (k) **the impact on other contracts.**

- 38.3 The Contractor is invited to submit innovative proposals to meet required savings targets, such proposals must be supported by the information required as above.

- 38.4 The Contractor shall provide the information requested under Clause 38.2 above in writing to the Authority within 30 (thirty) Business Days after the Contractor receives the written notification or within a timescale agreed between the Parties.

- 38.5 The Contractor shall not implement any of the proposed options until advised to do so under a written Amendment issued by the Authority's Commercial Branch. The Authority shall provide the

Contractor with a minimum period of 3 (three) months' written notice of any changes to be implemented to this Contract under the terms of this Clause 38, unless a shorter period is agreed between the Parties. To assist the Authority in meeting its objective of reducing in-year expenditure, the Contractor shall use all reasonable endeavours to work with the Authority to reduce the implementation period of any agreed changes without further adversely affecting the operation of this Contract and other equipment / projects.

- 38.6 In the event that the Parties cannot reach agreement to implement in-year savings measures the Authority reserves the right to modify the scope of this Contract to meet its revised requirements.
- 38.7 Any amendments to the Contract Price resulting from changes implemented under this Clause 38 shall be agreed under the Contract Change Procedure, unless otherwise agreed by the Parties in writing.
- 38.8 The Authority agrees not to exercise its rights to implement any reduction in the scope of the Services and/or the Contractor Deliverables under this Clause 38 more than once in any 12 (twelve) month period, without the consent of the Contractor. In exercising its rights, the Authority agrees that the total value of the Contract that will be considered for expenditure reduction under this Clause will be limited to 10% of the total residual value of the Contract at the point of review.
- 38.9 For the avoidance of doubt, in the event that the Authority exercises its rights to implement any reductions, any monies expended by the Contractor in accordance with the scope of the Contract that existed prior to any reductions coming into effect will be paid by the Authority in full.
- 38.10 The Authority's exercise of its rights under this Clause 38 shall not prejudice any other of its rights provided in or in connection with this Contract and the Contractor shall not be relieved of any of its other obligations provided in this Contract, unless and to the extent agreed by the Authority in writing.
- 38.11 All proposals submitted under this condition to meet the Authority's need to reduce Contract expenditure shall be supported by a cost model using the Contractor's cost model prevailing at the date of Contract as a baseline. This baseline will be used to demonstrate where and how cost reduction has been achieved together with the impact of the cost reduction on a through life capability management basis, or an alternative baseline to be agreed with the Authority.

39 Change in Law

- 39.1 The Contractor shall, save where expressly provided pursuant to this Contract, comply with all Law (applicable to the provision of the Services and the Contractor's other obligations under this Contract) from time to time in force and shall pay all fees and charges and costs required to be paid under any Law (applicable to the provision of the Services and the Contractor's other obligations under this Contract) from time to time in force.
- 39.2 The Parties shall each use reasonable endeavours to monitor any planned or implemented Changes in Law through the Contract Term and shall notify the other Party in writing of any planned or implemented Change in Law which may affect the provision of the Services and/or costs associated with the Contractor performing its obligations under this Contract.

39.3 In particular:

- (a) the Contractor shall use reasonable endeavours to keep the Authority informed of any planned Change in Law which, as a defence contractor in the United Kingdom it would reasonably be expected to foresee and which would, if implemented, only affect companies involved in the provision of the Services in the United Kingdom; and
- (b) the Authority shall use reasonable endeavours to keep the Contractor informed of any planned Change in Law to be issued by the Authority relevant to the provision of the Services which, if implemented, would impact upon the basis of performance of the Authority's obligations under this Contract as a UK Government department engaged in the procurement of services to the defence sector in the United Kingdom.

39.4 The Contractor shall not be able to adjust the Contract Price as a result of a Change in Law other than for a Qualifying Change in Law. For the avoidance of doubt should any Change in Law result in a benefit to the Contractor which the Contractor is not required to pass through to the Authority either by Law or in accordance with the terms of this Contract, such benefit shall be for the Contractor.

39.5 If the Contractor believes a Change in Law has occurred or is likely to occur, it shall notify the Authority in writing as soon as practicable and such notice shall stipulate:

- (a) the nature of such Change in Law;
- (b) the date such Change in Law shall come into force;
- (c) any change which **in** the Contractor's opinion is necessary to the Services; and
- (d) (in the case of a Qualifying Change in Law only) any fees, charges or costs payable as a result of such Qualifying Change in Law and, for the avoidance of doubt, in respect of a Qualifying Change in Law, the Contractor may submit a notice under the Change Control Procedure where the only change required to this Contract is in accordance with limb (d) above.

39.6 Subject to Clause 39.8, in the event of a Change in Law occurring and/or if the Contractor reasonably believes that action or preparation work needs to be undertaken in preparation for a future Change in Law coming into force and has commenced such action or preparation work, either party may raise a notice pursuant to the Change Control Procedure and while the Change Control Procedure shall apply to a Change in Law, the Contractor shall not be entitled to adjust the Core Price as a result of a Change in Law other than:

- (a) for a Qualifying Change in Law; or
- (b) where in respect of any Change in Law, which is not a Qualifying Change in Law, the Authority has agreed pursuant to the Change Control Procedure, to any change in the Core Price.

The Contractor shall, in any event, use all reasonable endeavours to minimise the negative impact and maximise the positive impact of the Change in Law and mitigate any detrimental consequences of such Change in Law.

- 39.7 The Authority may specify (in response to a notice under the Change Control Procedure issued pursuant to Clause 39.6) an alternative means by which the relevant Change in Law can be complied with, either by providing an [Authority Change Proposal] replacing any relevant Contractor Change Proposal or specifying how the matter is to be addressed include by any change in or as a result of any interpretation of the relevant Law or Regulation provided that the Contractor shall still be capable of complying with such Law or Regulation.
- 39.8 **In** the event of a Qualifying Change in Law occurring and/or if **the** Contractor **reasonably** believes that action **or** preparation work needs **to** be undertaken in preparation for a future Qualifying Change in Law so coming into force and has commenced such action or preparation work:
- (a) there shall be a deemed change to this Contract and this Contract shall be amended in accordance with the Change Control Procedure in respect of any changes arising as a result of the Qualifying Change in Law; and
 - (b) the Contractor shall:
 - (i) provide reasonable supporting evidence that the Contractor has used reasonable endeavours to minimise any increase in costs and maximise any reduction in costs arising from such change in law; and
 - (ii) provide reasonable supporting evidence that any expenditure that has been avoided, which was anticipated to be incurred, has been taken into account in the amount which in its opinion has resulted from such change or is required under this Clause 39.
- 39.9 Any dispute in relation to any Qualifying Change in Law and the operation of Clauses 39.5 and 39.8 shall be assessed and resolved in accordance with the Dispute Resolution Procedure.

40 Government Grants

- 40.1 The Contractor shall not claim any grant from Government funds towards the cost of jigs, tools, moulds, dies, manufacturing gauges or test equipment which are provided by it and for which the amount payable to it by the Authority is the actual or estimated full amount of its expenditure thereon.
- 40.2 The Contractor shall ensure in all Sub-Contracts under which it is to bear the full cost of any jigs, tools, moulds, dies, manufacturing gauges or test equipment that the Subcontractor shall not claim any grant from Government funds in respect of any such item.

41 Access, Audit and Inspection

- 41.1 The Authority shall be entitled to audit the Contractor's project management procedures, procurement, accounting and invoicing arrangements in connection with this Contract. The Authority's rights of access, audit and inspection shall be deemed to extend to the Contractor's internal system for controlling and progressing of all work under the Contract and the related accounting and invoicing arrangements.
- 41.2 The Authority shall give the Contractor at least 7 (seven) Business Days' advance notice of the Authority's intention to audit its project management procedures, procurement, accounting and invoicing arrangements.

- 41.3 The Contractor shall arrange for the Authority's Project Manager and his/her representatives to have reasonable access to the premises where the work under the Contract is being undertaken and to Technical Information relevant to this Contract for the purposes of monitoring progress of the work under this Contract.
- 41.4 Visits by the Authority's Project Manager or his/her representatives to any Sub-Contractor shall normally only be made after consultation with the Contractor. Ad-hoc visits may also take place where it is felt that an ad-hoc visit is in the Authority's interest.
- 41.5 Clauses 41.1 to 41.4 (inclusive) shall in no way limit the rights of access, inspection or audit of the Authority's Project Manager or his/her representative otherwise provided in this Contract.
- 41.6 Where requested by the Authority (acting reasonably), the Contractor shall provide to the Authority throughout the Contract Term the following:
- (a) **costing provision for partnering services aspects within the Contractor's QMAC;**
 - (b) other financial details and accounts as the Authority may reasonably require; and
 - (c) right of access to the Contractor's source data (including computerised records and data) used in the preparation of any of the information or reports generated under this Contract.

42 Intellectual Property Rights

The IPR DEFCONs and IP Rights that exist in work committed to contracts prior to the date of this Contract remain as stated in those contracts, as detailed at Annex N (*IPR Conditions under pre-existing Contracts*). To the extent that work under this Contract relates to those equipments previously subject to the conditions at Annex N and to the extent that those IPR Conditions conflict with the M-SET IP Conditions of this Contract then the relevant IP DEFCONs and associated IP DEFCON notes of Annex N shall apply to such work instead of those M-SET IP DEFCONs. Without prejudice to any DEFFORM 315s as may be agreed under this Contract then to the extent that work under this Contract relates to equipment for which DEFFORM 315s were raised under Annex N then the Authority shall be entitled to rely on such DEFFORM 315s applying to deliverable Information under this Contract.

Any Intellectual Property which is generated directly in performance of, and funded by, this Contract (Foreground Intellectual Property) shall vest in and be the property of the Contractor or its licensors. The Contractor grants to the Authority a non-exclusive, royalty free license to use the Foreground Intellectual Property for the purpose of meeting its obligations under the contract.

42.1 Technical Publications

The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any technical publication called for under the Schedule or any part thereof including any such part when incorporated in any amended or extended version of such technical publication, and to circulate, use or have used said technical publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose, but not for the purpose of manufacturing equipment to which the technical publication relates. Where any repair, maintenance, operation and training information is utilised or generated in performance of the Contract but not specified in the Schedule as a technical publication then this

will be construed to be subject to this Clause 42 unless the Authority agrees in writing on a case by case basis to the contrary.

42.2 Retention of Records

During the period of this Contract and thereafter for not less than six (6) years records and shall be retained in accordance with DEFCON 21 (Edn 06/21).

42.3 Security of Supply

42.3.1 In the event that:

- (a) **the Contractor is unwilling or unable to accept on fair and reasonable terms a follow-on contract from the Authority for the continuing provision of the Services and the supply of any Articles which are the subject of this Contract or services or Articles similar to those under this Contract, or**
- (b) **the Contractor permanently discontinuing its business because of bankruptcy, receivership, dissolution or other form of permanent business disruption and such business is not continued by a successor in interest to the Contractor to whom the relevant intellectual property rights have been transferred,**

then the Authority shall have the right to obtain from the Contractor or from the authorised trustees or receivers acting on behalf of the Contractor sufficient information and licence(s) required for the continued provision of the Services and Articles which are the subject of this Contract or such similar services or Articles. Such information and licence may be used in confidence by a third party, appointed by the Authority, to provide to the Authority the Services and Articles or such similar services and Articles to those of this Contract. The Authority and the Contractor (or authorised trustees or receivers as applicable) shall agree a fair and reasonable fee for such information and licence at an appropriate value and fee to be determined.

- (c) The Services or Articles provided under the Contract require access to any special equipment including but not limited to tooling, jigs, test equipment or software compilers then the Contractor shall notify the Authority of such items and their relevance to the equipment or software under the Contract. The Contractor shall not dispose of any such special equipment without first offering the same to the Authority on terms no less favourable than those proposed to apply to a third-party purchaser.
- (d) The Authority exercises the rights under this condition 42.3 then the Contractor shall at the request of the Authority provide to the Authority (or any third party appointed by the Authority) reasonable assistance with the understanding of any Technical Information required to enable continued provision of the Services and Articles which are the subject of this Contract or such similar services or Articles.

42.4 Private Venture Funding

The Contractor shall not introduce any private venture funding to equipment under the Services without the prior written agreement of the Authority's Commercial Branch (such agreement not to be unreasonably withheld). Failure to follow this will result in such elements whether hardware,

software or otherwise being considered as being funded under this Contract with the Authority having rights to use and have used associated information consistent with this premise.

42.5 Preservation of Rights

Nothing in this Contract shall or shall be deemed to diminish any entitlement to use Intellectual Property that has been acquired outside this Contract.

42.6 Sub-Contracts

The Contractor shall not enter into any Sub-Contract for the design of any Article in respect of which the Authority will have rights pursuant to this Contract until the Sub-Contractor has entered into an agreement with the Authority in the form set out in DEFFORM 177 (Edn 06/21) which provides rights consistent with those secured under this Contract. Wherever possible, the request for approval should be accompanied by two copies of the agreement signed by the Sub-Contractor. If in any case the Contractor is unable to comply with this condition, he shall report the matter to the Authority's Commercial Branch and await further instructions before placing the Sub-Contract or order.

42.7 Commercial Exploitation

42.7.1 (In relation to Sonar 2093 (as defined in Annex A (*Statement of Requirements*)) only) In the event that the Contractor under the Contract creates any new design or modifies any existing design and makes any sales to a third party of Articles or software based upon such new or modified design then such sales shall (to the extent that the Authority funded the design) be subject to the terms of a commercial exploitation levy agreement in accordance with Annex AG and the Contractor acknowledges and accepts that the percentage levy or levies that are applicable to any such commercial exploitation levy agreement shall at a minimum be equal to any percentage levy or levies agreed by the Parties in connection with Contract No. MCS/1017.

42.7.2 (In relation to MEWSS Block 1 (as defined in Annex A (*Statement of Requirements*)) only) The Contractor shall not sell other than to the Authority any Articles or software which involve the use of the results of the design and/or development work carried out under the Contract without the prior approval of the Authority. All such sales shall be subject to the Parties agreement of:

- (a) **a commercial exploitation levy agreement for hardware in respect of re-designed elements of an Article and to modifications, new Articles etc. whose development is funded under this Contract; and/or**
- (b) **(where the software is exploited separately), a commercial exploitation levy agreement for software funded by the Authority under this Contract,**

and the Contractor acknowledges and accepts that any commercial exploitation levy agreement or agreements as may be required by this Clause 42.7.2 shall be effected by either:

- (c) **an amendment to the commercial exploitation levy agreement or (as the case may be) agreements as may have been agreed between the Parties in connection with Contract No. MCS/1017; or**

(d) **(where a relevant commercial exploitation agreement has not yet been agreed between the Parties in connection with Contract No. MCS/1017 agreement of a:**

- (i) a single commercial exploitation levy agreement for hardware covering both the re-designed elements of an Article and to modifications, new Articles etc. whose development is funded under this Contract, as well as, that which was funded under Contract No. MCS/1017; and/or
- (ii) (where the software is exploited separately), a single commercial exploitation levy agreement covering both software funded by the Authority under this Contract as well as that which was funded under Contract No. MCS/3006 save to the extent that where no software funded under Contract MCS/3006 is to be exploited separately and the separate exploitation of software is limited to that funded under this Contract in such case the Parties shall agree a commercial exploitation levy agreement for software in the form as set out in Annex AH to the Contract.

42.7.3 The Parties acknowledge and accept the agreement of any commercial exploitation levy agreement or agreements in connection with Contract MCS/3006 shall not of itself satisfy the requirements of Clause 42.7.2 until and unless it is formally agreed between the Parties that the scope of such commercial exploitation levy agreement or agreements includes the relevant work funded under this Contract and the inclusion of such work is expressly documented within such commercial exploitation levy agreement or agreements.

43 Government Furnished Assets

- 43.1 The Authority shall be responsible for providing the Government Furnished Assets to be supplied under the Contract as detailed at Annex P (*Government Furnished Equipment*).
- 43.2 The Contractor acknowledges and agrees that all GFA shall at all times remain the property of the Authority and that each such item shall be used in the provision of the Articles and Services under this Contract and for no other purpose, without the prior approval in writing of the Authority.
- 43.3 The Contractor shall be responsible for the management of all GFA in accordance with (in relation to GFE only) DEFCON 611 (Edn 02/16), (in relation to all GFA) DEFCON 694 (Edn 07/21) and the Asset Management Plan detailed at Annex E (*Deliverable Documentation*).
- 43.4 From the Effective Date and throughout the Contract Term the Contractor undertakes to the Authority to utilise all Issued Property for its intended purposes only, to exercise all due and reasonable care in the use of Issued Property and to use reasonable endeavours to comply at all time with any guidance or written instructions of the manufacturer/service provider (provided at the time of issue of the Issued Property) in respect of such GFA and which has been provided to the Contractor in accordance with Clause 42.1 and all applicable Laws and Regulations.
- 43.5 At expiry or upon earlier termination of this Contract, (in relation to GFE only) in accordance with DEFCON 611, the Contractor shall provide to the Authority a list of all GFA holdings under this Contract. The Authority's Commercial Branch shall issue directions for the transfer, disposal or return to stores of all listed items, with which the Contractor shall comply in accordance with Annex S (*Exit Management*).

43.6 Issued Property

- 43.6.1 The Contractor undertakes to the Authority to utilise all Issued Property for its intended purposes only, to exercise all due and reasonable care in the use of Issued Property and to use reasonable endeavours to comply at all time with any guidance or written instructions of the manufacturer/service provider (provided at the time of issue of the Issued Property) in respect of such GFA and which has been provided to the Contractor in accordance with this Clause 43 and all applicable Laws and Regulations.
- 43.6.2 By no later than five (5) Business Days of receipt of Authority Issued Property (which for the avoidance of doubt shall exclude the property and facilities described in Annex P (*Government Furnished Equipment*) or such later date as the Parties shall agree, the Contractor shall:
- (a) check the Authority Issued Property to verify that it corresponds with the Issued Property specified in this Agreement and the relevant consignment number;
 - (b) conduct a reasonable visual inspection;
 - (c) conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided; and
 - (d) notify the Authority of any defects, deficiencies or discrepancies discovered or otherwise any other unavailability of Authority Issued Property (including, for any items which are the last of their kind or spare parts which are rare to source, whether it deems such items beyond economic repair) as soon as reasonably practicable after becoming aware of such defect, deficiency, discrepancy or unavailability but in any event not later than two (2) Business Days of becoming aware of the same.
- 43.6.3 Notwithstanding the requirement under Clause 43.6.2(d) above, the Contractor shall also be required to notify the Authority as soon as reasonably practicable of any defects, deficiencies or discrepancies discovered or otherwise any other unavailability of Authority Issued Property (including, for any items which are the last of their kind or spare parts which are rare to source, whether it deems such items beyond economic repair) which occurs during the period in which the Contractor is in control of such Authority Issued Property.
- 43.6.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary (unless a warranty/guarantee period is applicable in which case it shall be opened as soon as reasonably practicable). The period identified at Clause 43.6.2 above shall count from the date on which packages are opened.
- 43.6.5 If:
- (a) the Contractor fails to comply with its obligations to notify under Clause 43.6.2(d) or 43.6.3 above; or
 - (b) any defect, deficiency, discrepancy or unavailability of Issued Property (whether properly notified to the Authority in accordance with Clause 43.6.2(d) or 43.6.3 or not) is determined by the Authority to have been caused by the Contractor failing to: properly maintain, store or secure such Issued Property; use such Issued Property for its intended purpose; or due to the negligence of the Contractor,

the Authority shall be entitled either itself or through a third party to arrange for the replacement, repair, maintenance, substitution of such Issued Property (as appropriate and at the Authority's discretion) and the Contractor shall reimburse to the Authority on demand by the Authority all reasonable costs and expenses incurred by the Authority in connection with such replacement, repair or maintenance.

43.6.6 Subject to Clause 43.6.4, the Authority shall within five (5) Business Days or such other period as agreed between the Parties, after receipt of any notice under Clause 43.6.2(d) or 43.6.3 above grant relief to the Contractor from any Contractor Non-Performance arising from defective or deficient Authority Issued Property (provided always that an equivalent item of Authority Issued Property cannot be provided and is sufficient to ensure performance) and at the Authority's discretion:

- (a) replace, re-issue or repair of such Authority Issued Property;
- (b) procure that the Contractor replace or repair such Authority Issued Property at the Authority's cost; or
- (c) permanently relieve the Contractor of its obligation to perform the Service impacted by the failure to provide such Authority Issued Property and if appropriate issue a Contract Change Proposal.

If appropriate, the Authority shall also issue written instructions for the return or disposal of the defective or deficient Authority Issued Property and maintain records accordingly.

43.6.7 In the event that the Authority fails to provide, replace, or repair any defective or deficient Contractor Issued Property within three five (5) Business Days or such other period as agreed between the Parties, of receipt of a notice in accordance with Clause 43.6.4 above, the Contractor shall be entitled to a fair and reasonable revision of the Contract Price and/or Contract Schedule (as relevant) as may be appropriate. The Contractor shall take all reasonable measures to mitigate the consequences of any such delay.

43.6.8 Subject to Clause 43.6.10 below, and any limitation or exclusion of liability as may be specified in this Contract, the Contractor shall be responsible for any Issued Property in its control and for the safe, secure and suitable storage and protection of such Issued Property and due return of Authority Issued Property, until re-delivered in accordance with the Authority's instructions.

43.6.9 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Authority Issued Property, shall notify the Contractor of the value of the Authority Issued Property.

43.6.10 The Contractor shall not be liable in respect of:

- (a) defects, deficiencies or discrepancies notified to the Authority in accordance with Clause 43.6.2(d) or 43.6.3 which the Contractor can show could not reasonably have been mitigated by it
- (b) defects or deficiencies notified to the Authority in accordance with Clause 43.6.2(d) or 43.6.3 above, or latent Authority Issued Property defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 43.6.2(d) or 43.6.3 above;

- (c) fair wear and tear in Authority Issued Property resulting from its normal and proper use in the execution of this Agreement (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor or its Sub-Contractors or any Contractor Personnel);
- (d) Authority Issued Property rendered unserviceable as a direct result of ordinary and proper performance of the Contractor's obligations under this Agreement; and
- (e) any loss or damage to Authority Issued Property arising from:
 - (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
 - (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
 - (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; and/or
 - (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, terrorism, military or usurped power or acts of the King's enemies.

43.7 Fixed Assets

- 43.7.1 The fixed assets to be issued as Contract Support Items (CSI) under this Contract, and their locations, are detailed at Annex P (*Government Furnished Equipment*). All fixed assets detailed at Annex P (*Government Furnished Equipment*) are available to the Contractor from the Effective Date until expiry or earlier termination of the Contract, or until out of service date of the relevant equipment.
- 43.7.2 **Contract Support Items** are defined as follows: "Items of Authority owned material issued to the Contractor without charge for a specified period and purpose in support of the Contract." The loaned material should be returned to the Authority unchanged except for fair wear and tear in accordance with the provisions of this Contract.
- 43.7.3 The Contractor shall keep a fixed asset register of all Reference Sets issued by the Authority as GFE under the Contract.
- 43.7.4 The Authority agrees that the contents of Annex P (*Government Furnished Equipment*) are not necessarily exhaustive and further items may be included after the Effective Date. Requests from the Contractor for additional GFA shall be considered by the Authority and, if accepted, the items shall be added to Annex P (*Government Furnished Equipment*) in accordance with DEFCON 503 (Edn 06/22) or DEFCON 620 (Edn 06/22).

43.8 Facilities

The facilities listed in Annex P (*Government Furnished Assets*) shall be provided under the tenancy agreements detailed in Clause 44 (*Licences*).

43.9 Contract Embodiment Items

- 43.9.1 During the Contract Term it may be necessary for the Authority to issue Contract Embodiment Items (CEI) as GFE to the Contractor in furtherance of the Services. Any such items shall be issued via the Authority's CRISP (Comprehensive RNSTS Inventory System Project) or such other BIMS (Base Inventory Management System) the Authority may introduce as Contract Embodiment Items in accordance with DEFCON 611 (Issued Property).
- 43.9.2 **Contract Embodiment Items** are defined as follows - Items of Authority-owned material issued without charge to the Contractor for embodiment in an Article that is under manufacture, modification, conversion or repair in accordance with the provisions of this Contract.
- 43.9.3 The Contractor shall manage and maintain a record of all CEI already held or issued under the Contract in accordance with DEFCON 611 (Edn 02/16) and the Configuration Management Plan detailed at Annex E (*Deliverable Documentation*).

43.10 Contract Works Items

- 43.10.1 Articles to be repaired under this Contract shall be issued to the Contractor via the Authority's CRISP, or such other BIMS (Base Inventory Management System) the Authority may introduce system as Contract Works Items (CWI) in accordance with DEFCON 611 (Edn 02/16).
- 43.10.2 **Contract Works Items** are defined as follows - Items of Authority owned material issued for the purpose of its undergoing repair, maintenance, modification and conversion in accordance with the provisions of this Contract.
- 43.10.3 Any items removed from existing CWI should be treated as Contract Work Arising (CWA) items. Once removed, if the item is not to be disposed of, it is either brought back on contract as a CWI pending work completion, issued as a CEI for embodiment, or a CSI.
- 43.10.4 **Contract Work Arising** is defined as follows - an item of materiel, which is removed (often as a result of cannibalisation or salvage action) from an existing item of materiel (which may then be identified for disposal) for incorporation into another item of materiel, or for retention as a fixed asset or stock item.

43.11 Supply of GFI by the Authority

- 43.11.1 Within two (2) months after the Authority's receipt of the list of all GFI holdings under the Contract pursuant to Clause 43.5 the Authority shall instruct the Contractor as to the method of disposal of all GFI supplied under this Contract and the Contractor shall promptly comply with and give effect to such instruction. All GFI shall be returned to the Authority or, if so instructed by the Authority in writing, destroyed, in accordance with the instructions provided in connection therewith and a valid certification of such destruction shall be provided by the Contractor to the Authority. This shall apply equally to any GFI provided to the Contractor by electronic means and to any GFI provided in hard copy.
- 43.11.2 In the case of GFI stored on computer networks and which has been backed up by automatic archiving systems the Contractor shall take reasonable and proportionate action to remove or render inaccessible such GFI.

43.12 Disposal Costs

All costs and fees arising from the disposal of any Issued Property declared Beyond Economical Repair in accordance with Annex A (Statement of Requirements) are included in the Core Price and accordingly the Contractor's performance of its obligations in connection therewith shall be at no additional cost, charge and/or expense to the Authority (notwithstanding any other provision of this Contract, including within Annex S (*Exit Management*)).

43.13 Supply of GFA (Additional Services)

This Clause 43 (including Clause 43.12) shall apply equally to any GFA supplied by the Authority in respect to any Additional Service authorised by the Authority for delivery in accordance with Clause 9, such asset provision and availability being as specified in the applicable Task, save to the extent that the relevant Task sets out alternative arrangements for the treatment and/or disposal of such assets in connection with such service.

44 Licences

- 44.1 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 the Contract. The Contractor may be required to sign a Business Tenancy Agreement, which shall become Annex R to the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of the Contract in accordance with Annex S (*Exit Management*).
- 44.2 The Contractor shall be solely responsible for all the Contractor's property including Contractor Equipment, wherever it may be located, and shall promptly repair or replace at its own cost any lost, stolen, damaged or defective Contractor Equipment. If such loss, theft, damage or defect is directly caused by any negligent act or omission of the Authority, the Authority shall reimburse the Contractor for the reasonable costs of such repair or replacement, but the Contractor shall at all times have an obligation to promptly repair or replace such Contractor Equipment.
- 44.3 Subject to any express provision in Clause 47 (Business Continuity) to the contrary and Clause 18 (Force Majeure Events) the loss or destruction for any reason of any Contractor Equipment shall not relieve the Contractor of its obligation to supply the Services in accordance with this Contract, including the Performance Levels.

45 Contract Governance

Both Parties shall exercise governance of the Contract in accordance with the Contract governance regime detailed at Annex F (*Governance*).

46 Dispute Resolution

- 46.1 The Parties shall attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of the escalation procedure set out in the following Clauses 46.2 to 46.5 (inclusive), before referring the matter, if necessary, to any other alternative dispute resolution process (including Arbitration) through the procedures specified in DEFCON 530 (Edn 12/14).

- 46.2 Should a dispute arise, either Party may inform the other Party in writing of the nature of dispute and the matter in dispute. The Parties agree to try and resolve any dispute arising under this Contract by discussion during the next available Project Review Meeting. In the event that a meeting is not due within 10 (ten) Business Days after written notification of a dispute arising, an ad hoc meeting shall be convened for the purpose of attempting to resolve the dispute. Any such meeting shall be held at a UK location decided by the Authority. Any cost to the Contractor relating to such ad hoc meetings shall be subsumed by the Contractor.
- 46.3 In the event that the dispute remains unresolved both Parties shall within 5 (five) Business Days after the date of the meeting summarise their positions in writing and refer the matter to the Authority's Commercial Branch and the Authority's Project Manager for consideration. A meeting between the Authority's Commercial Branch, the Authority's Project Manager and their counterparts in the Contractor's organisation may be held for further clarification on the dispute.
- 46.4 If after referral to the Authority's Commercial Branch and the Authority's Project Manager and any subsequent meeting with the Contractor as detailed above, the dispute remains unresolved after a further 5 (five) Business Days, the dispute shall be referred through the functional management chain to the Authority's Operating Centre Commercial Head and the Contractor's counterpart for consideration and possible agreement.
- 46.5 If the foregoing actions do not resolve the dispute, then the dispute shall, unless the Parties agree to the use of any alternative dispute resolution process (ADR) in accordance with clause 1 of DEFCON 530 (Edn 12/14), be referred to arbitration in accordance with clauses 2-6 inclusive of DEFCON 530 (Edn 12/14).

47 Business Continuity Management

- 47.1 In the event of major failure(s) or disaster(s) which impacts on the Contractor's processes used in the support provided under this Contract, the Contractor shall maintain continuity of the support in accordance with its business continuity management plan (**BCMP**), crisis management plan and disaster recovery plan which is an item of Deliverable Documentation in accordance with Annex E (*Deliverable Documentation*).
- 47.2 A preliminary draft of the BCMP shall be provided within 3 (three) months after the Effective Date of Contract and agreed with the Authority within 6 (six) months after the Effective Date.
- 47.3 The Contractor's BCMP shall set out the arrangements that are to be invoked to ensure that the business processes and operations, required by the Contractor to provide the support covered under this Contract, remain supported including, but not limited to:
- (a) **the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the business processes and operations; and**
 - (b) **the steps to be taken by the Contractor upon resumption of the business processes and operations in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.**
- 47.4 The disaster recovery plan shall only be invoked upon the occurrence of a disaster. In the event of a complete loss of service or in the event of a disaster, the Contractor shall immediately invoke the BCMP (and shall inform the Authority promptly of such invocation).

- 47.5 The Contractor shall review part or all of the BCMP in accordance with its business procedures (and the risk analysis on which it is based) on a regular basis and as a minimum once every 12 (twelve) months or as otherwise agreed.

48 Partnering Principles

- 48.1 Both Parties to this Contract consider partnering to be fundamental to a successful outcome and agree to the principles set out at Annex U (*Partnering Principles*) to this Contract. Partnering provides an environment in which the Authority and its suppliers will work together from the earliest stage of a procurement to achieve the mutual goal of value for money. The relationship, whilst building on the public sector procurement disciplines of accountability and probity, will be pragmatic; questioning and challenging accepted processes and procedures; seeking timely and realistic trade-offs between user needs, equipment/service delivery and performance.
- 48.2 The Parties agree to conduct their dealings with each other in a partnering manner and accordingly agree to adhere, subject to Clause 48.3, to the terms set out in Annex U (*Partnering Principles*).
- 48.3 It is acknowledged and agreed by the Parties that the provisions of Annex U (*Partnering Principles*) are not intended to have legal binding effect and there can be no recourse or relief for either Party pursuant to the terms of this Contract for any actual or alleged breach of the terms of Annex U (*Partnering Principles*).
- 48.4 Unless the Parties agree otherwise, at or around each anniversary of the Effective Date (or on such other date as the Parties may agree) the Parties shall hold a review of the partnering relationship between them. The attendees at the review shall be appropriate and sufficiently senior representatives from each Party. At this review the Parties shall, if appropriate, update Annex U (*Partnering Principles*) to give effect to any agreed recommendations arising from the partnering review.

49 Not used

50 Amendments to Contract

- 50.1 Notwithstanding the inclusion of DEFCON 503 (Edn 06/22) and the Contract Change Procedure, only the Authority's Commercial Branch referred to in the Appendix (DEFFORM 111) to Contract is authorised to vary any provision of this Contract. Such variation shall only have effect when agreed in writing.
- 50.2 The Parties may from time to time agreed new rates for inclusion in Annex I (*Contract Rates*), subject to and in accordance with Clause 50.1

51 Sub-Contracts

51.1 General

- 51.1.1 The Contractor shall provide the Authority with such information as the Authority (acting reasonably) may require in relation to any proposed Sub-Contract to be entered into after the Effective Date in relation to the Services and/or the Contractor Deliverables (or any part of them).
- 51.1.2 Where a Sub-Contract is entered into in relation to the Services and/or the Contractor Deliverables (or any part of them) it shall cause a term to be included in that Sub-Contract which requires

payment by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) days from a valid invoice as required by the terms of the Sub-Contract.

- 51.1.3 Without limitation to Clause 8.3.1, Sub-Contracting any part of this Contract shall not relieve the Contractor of responsibility to the Authority, subject to the provisions of the Contract, for the timely, economic and proper performance of the Contractor's obligations under this Contract.
- 51.1.4 The Contractor's responsibilities referred to in Clause 51.1.1 above shall apply equally to work carried out by Sub-Contractors in respect of the requirements of the Contract.
- 51.1.5 The Contractor shall be fully responsible for the selection, award and administration and performance of all Sub-Contracts.
- 51.1.6 The Contractor shall ensure that the provisions of this Contract are reflected in all Sub-Contracts at whatever level, to the extent necessary to enable the Contractor to fully meet its obligations to the Authority under the Contract. Without prejudice to the express provisions elsewhere in this Contract requiring the Contractor to impose any contractual obligation on a Sub-Contractor, the Contractor shall ensure that each Sub-Contract with a member of the Contractor Group and use reasonable endeavours to ensure that each Sub-Contract contains in each case provisions that impose on the Sub-Contractor obligations that are equivalent (subject to necessary changes) to the obligations of the Contractor in this Contract under the following provisions:
- (a) Clause 18.7 (*Termination or Partial Termination of the basis of a Force Majeure Event*);
 - (b) Clause 19.2 (*Break (Voluntary Termination by the Authority)*);
 - (c) Clause 55 (*Confidentiality*);
 - (d) Clause 58 (*Security Aspects*);
 - (e) Clause 53 (*Public Relations and Publicity*);
 - (f) Clause 63.1 (*Corrupt Gifts and Payments*); and
 - (g) Clause 63.2 (*Equality*); and
 - (h) DEFCON 658 (*Cyber*).
- 51.1.7 The Contractor shall furnish the Authority with a copy of any such Sub-Contract, if required by the Authority.
- 51.1.8 The Contractor shall use reasonable endeavours to include in all Sub-Contracts an option for the Authority to novate, replicate or transfer such sub-contracts in the event of whole or partial termination pursuant to Clause 19.3.1. In such circumstances, the Authority will either novate the Sub-Contracts under the same terms and conditions and costs or negotiate new Contracts. Where supplies of equipment, line replaceable units (LRUs), sub-assemblies, etc. are the subject of orders with the Contractor which have either been completed or would not be economic to terminate, the Authority may opt to procure such items from the Contractor at the direct cost of such items plus the agreed recoveries in accordance with the Contractor's QMAC.

51.2 Supplier Selection (Sub-Contracting)

- 51.2.1 The Authority favours competition as the preferred means of supplier selection for its Defence requirements and wishes to see the greatest application of competition by the Contractor for Sub-Contract activities.
- 51.2.2 The Authority recognises that the Contractor's longer-term strategic relationships with its suppliers may also provide demonstrable value for money in the supply chain.
- 51.2.3 It is accepted by both Parties that as a result of consolidation in the defence industry, the Contractor is and will be faced with fewer sourcing opportunities, where often the choice may be limited either to one of its own business units or to a single unaffiliated company for the supply of sub-systems or components.
- 51.2.4 The Authority shall upon the request of the Contractor provide reasonable assistance to enable the Contractor to establish Sub-Contractor prices. In addition, the Authority shall provide in a timely manner any information, data, drawings available to the Authority at no charge to enable the Contractor to compete non-proprietary elements of work to be performed under this Contract.

51.3 Appointment of Key Sub-Contractors

- 51.3.1 Notwithstanding this Clause 51.3, the Authority consents as at the Effective Date to the appointment by the Contractor of the Key Sub-contractors listed in Annex AC (Approved Key Sub-Contractors).

Where the Contractor wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-Contractor if:

- (a) it reasonably considers that and informs the Contractor insofar as the Authority is permitted that:
 - (i) the appointment of a proposed Key Sub-Contractor shall prejudice the provision of the Services or may be contrary to the interests of the Authority; and/or
 - (ii) the proposed Key Sub-Contractor employs persons who are unfit or otherwise would represent a risk to a government establishment; and/or
 - (iii) the proposed Key Sub-Contractor should be excluded in accordance with Clause 51.4 (*Termination of sub-contracts*).; or
- (b) it provides evidence in writing that the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers;

- 51.3.2 Not Used.

51.3.3 Except where the Authority has given its prior written consent, the Contractor shall ensure that each Key Sub-Contract shall include:

- (a) provisions which will enable the Contractor to discharge its obligations under this Agreement;
- (b) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority or any Replacement Contractor without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (c) a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the services provided to the Contractor under the Key Sub-Contract without first seeking the written consent of the Authority;
- (d) Not used;
- (e) the clauses required to be included pursuant to Clause 51.1.6 of this Contract.

51.3.4 Where:

- (a) the Contractor becomes aware of any issue or information which may in the Contractors opinion (acting reasonably) give rise to concern in terms of either (i) a Key Sub-Contractor's ongoing financial viability as a going concern; or (ii) a Key Sub-Contractor's ability to continue to perform its obligations a relevant Key Subcontract, the Contract shall as soon as practicable inform the Authority of the same; or
- (b) the Authority otherwise becomes aware of any issue or information as referred to in Clause 51.3.4(a) above,

following which the Contactor shall at the request of the Authority arrange a meeting with the relevant Key Sub-Contractor to discuss the issues and provide relevant assurances.

51.4 Termination of Sub-Contracts

51.4.1 The Authority may require the Contractor to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to a Default under this Contract;
 - (ii) the relevant Sub-Contractor or any of its affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-Contractor has failed to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and/or

- (iv) the Authority has found grounds for exclusion of the Sub-Contractor pursuant to Regulation 57 of the Public Contracts Regulations 2015; and

- (b) a Key Sub-Contract pursuant to Clause 54.10.

52 Assignment

52.1 Assignment by the Contractor

- 52.1.1 The Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Contract without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).
- 52.1.2 The Authority may (at its sole discretion) give its prior written consent to an assignment by the Contractor of its benefits under, or novation of, this Contract. In these circumstances the Authority may require as a condition of such prior written consent, in substitution of the Parent Company Guarantee then in existence, the provision of a guarantee substantially in the form of the existing Parent Company Guarantee.
- 52.1.3 Such guarantee shall be from the Holding Company of the assignee or novatee. Where the parent company is incorporated outside the United Kingdom, a legal opinion on the form specified in Annex T (*Parent Company Guarantee*) may be required from an independent legal adviser qualified to practice in the jurisdiction in which such parent company is established and has its head office.

52.2 Assignment by the Authority

- 52.2.1 The Authority may assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract and any associated licences to:
 - (a) **a Contracting Authority; or**
 - (b) **any other person with the prior written consent (not to be unreasonably withheld or delayed) of the Contractor.**

52.3 Appointment of Managing Agent

At any time during the Contract Term the Authority may appoint any private or public sector body (including any Contractor that is given the responsibility for managing and integrating the delivery of this Contract and other services or Authority agreements) to manage all or any part of this Contract on behalf of and for the benefit of the Authority, provided that any adverse impact of such appointment on the delivery of the Services shall be agreed by the Parties (acting reasonably) under the Contract Change Procedure.

53 Public Relations and Publicity

The Contractor shall not and shall procure that none of the Contractor Related Parties shall:

- (a) **communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract; or**

- (b) **use the Authority's name or brand in any promotion or marketing or announcement of orders,**

unless the Authority's Representative has given his prior written consent or as otherwise required to comply with Law.

54 Change of Control

54.1 The Contractor shall notify the Authority in writing , as soon as practicable, but in any event not less than thirty (30) Business Days in advance, of any proposed change of Control (as defined in Clause 54.2 below) (such change being a **Change of Control**) of the Contractor (whether directly or indirectly), and/or the Parent and/or any Key Sub-Contractor provided that the Contractor shall not be required to submit any information which is in breach of either any pre-existing non-disclosure agreement or any Law governing the conduct of the Contractor or any member of the Contractor's Group in the UK or other jurisdiction where the Contractor may be subject to legal sanction arising from submission of such notification.

54.2 For the purposes of this Clause 54 **Control** means the power of a person or a group of persons acting in concert (within the meaning of the City Code on Takeovers and Mergers) (**New Owner(s)**) to secure that the affairs of the Contractor (whether directly or indirectly), the Parent or Key Sub-Contractor (as applicable) are conducted in accordance with the wishes of that person or group of persons (as applicable):

- (a) **by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor** (whether directly or indirectly), the Parent or Key Sub-Contractor (as applicable); or
- (b) **by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor** (whether directly or indirectly), the Parent or Key Sub-Contractor (as applicable),

and a Change of Control occurs if a person or group of persons (as applicable) who controls the Contractor (whether directly or indirectly), the Parent or Key Sub-Contractor ceases to do so or if another person or group of persons acquires control of the Contractor (whether directly or indirectly), the Parent or Key Sub-Contractor.

54.3 The notification referred to in Clause 54.1 shall be submitted to the Authority's Commercial Branch and to:

Information Redacted

54.4 Notification by the Contractor of any Change of Control shall not prejudice the existing rights of the Authority or the Contractor under this Contract, nor create or imply any rights of either the Contractor or the Authority additional to the Authority's right to receive that notification.

54.5 The Contractor acknowledges that a Change of Control of the Contractor (whether directly or indirectly), the Parent or any Sub-Contractor may be subject to the terms of the NSIA and the Contractor undertakes to comply or otherwise procure compliance with the notification requirements under the NSIA in respect of any such Change of Control. Further, the Contractor acknowledges that certain assets used by the Contractor and/or its Sub-Contractors in the

provision of the Services may be "Qualifying Assets" under the NSIA and therefore any change of control of such assets may also be subject to notification under the NSIA.

- 54.6 The Authority shall be entitled to object to a Change of Control on any of the grounds set out in Clause 54.7(a) to (c) below. Where the Authority objects to the proposed Change of Control of the Contractor (whether directly or indirectly), the Parent or Key Sub-Contractor on any such grounds (or where the Authority objects to a proposed or actual Change of Control of the Contractor (whether directly or indirectly), the Parent or Key Sub-Contractor that it was not informed about in accordance with Clause 54.1) it shall promptly notify the Contractor and shall without delay, engage with the Contractor in detailed discussions to enable the Contractor to seek to address the Authority's concerns. Where the Authority considers that its concerns have been addressed to its satisfaction (acting reasonably) it shall notify the Contractor of this fact and withdraw its objection.
- 54.7 In the event that there is a Change of Control of the Contractor (whether directly or indirectly), the Parent or, subject to Clause 54.10, Key Sub-Contractor and: (i) the Authority has not been given the opportunity to object in accordance with Clause 54.6; or (ii) notwithstanding the objection of the Authority as set out in Clause 54.6 above the Authority's concerns have not been addressed to its satisfaction (acting reasonably), the Authority shall be entitled to terminate this Contract immediately in accordance with Clause 19.3.1 (*Authority right to terminate Contract without further remediation*) if:
- (a) the Authority, acting in the national interest or on grounds of defence, national security or national interest considers that it is inappropriate for the New Owner(s) to become involved or interested in the Contractor (whether directly or indirectly), the Parent or Key Sub-Contractor; or
 - (b) in the reasonable opinion of the Authority, it is inappropriate for the New Owner(s) to become involved or interested in the Contractor (whether directly or indirectly), the Parent or Key Sub-Contractor and their business because the Authority has received specific information from the Serious Fraud Office or the Crown Prosecution Service or any successor to either body about the suitability of the New Owner(s) to act in such capacity in relation to the Contractor (whether directly or indirectly), the Parent or Key Sub-Contractor; or
 - (c) any New Owner(s) has within the previous two (2) years:
 - (i) been convicted of a criminal offence relating to the conduct of its business or profession;
 - (ii) been determined by a governmental or regulatory authority to have materially failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
 - (iii) made any serious negligent or fraudulent misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or
 - (d) the New Owners(s) are subject to Sanctions.
- 54.8 Not Used.

54.9 Not Used.

54.10 Where a Change of Control relates to a Key Sub-Contractor then the Authority shall not be entitled to terminate this Contract provided that the Contractor serves a notice on the relevant Key Sub-Contractor terminating the relevant Key Sub-Contract (whether on a default, voluntary or any other basis) as soon as reasonably practicable but in any event no later than twenty (20) Business Days following receipt of a written notice from the Authority notifying the Contractor of its intention to terminate this Contract under Clause 54.7. Following such notice under this Clause 54.10 the Contractor shall immediately stop any sharing of Information with such Key Sub-Contractor notwithstanding any provision to the contrary in this Contract and shall not resume such activities with the explicit prior written consent of the Authority.

55 Confidentiality

55.1 This Condition shall apply in addition to and notwithstanding DEFCON 531 (Disclosure of Information) or any other confidentiality condition of the Contract.

55.2 All Contractor's personnel routinely attending at a MOD site will be required to sign a Confidentiality Undertaking as detailed at Annex AA (*Confidentiality Undertaking*) to Contract.

55.3 In addition to the Confidentiality Undertaking referred to above all Contractor's Personnel requiring access to BIMS shall be required to hold a current licence to access the Authority's Logistic Information Systems (LOG IS) issued by the Authority.

55.4 Subject to Clause 61 (*Limitation of Liability*) and the requirements of DEFCON 531, each Party shall on demand indemnify the other from and against all Losses incurred by arising out of or in connection with the unauthorised disclosure, use or loss of any Information.

56 Export Licences, Import Licences and customs clearance

56.1 General

56.1.1 Without limitation to the Contractor's obligations provided in Clause 8.1.2(c), it shall be the sole responsibility of the Contractor (as between the Parties) to obtain in a timely manner any and all import licence(s), export licence(s) and/or customs clearance(s) into the United Kingdom, or elsewhere, associated with the procurement of spares or repairs, from outside of the United Kingdom, in order to satisfy its obligations under this Contract. The Contractor shall be responsible for all duties, taxes, levies and imposts charged in connection with the import and/or export of any such procurement of spares or repairs.

56.1.2 It shall be the sole responsibility of the Authority to file customs clearances into the United Kingdom associated with the receipt into or/and transfer out from RN Naval ship stores / vessel into customs warehouse or customs warehouse to RN Naval ship stores / vessel where customs warehouse is maintained by the Authority. The FR shall be responsible for all duties, taxes, levies and imposts charged in connection with any such import and/or export and indemnifies the Contractor in full against any and all such costs.

56.1.3 Both Parties recognise the potential opportunity for VAT relief, through use of Customs Warehousing and other customs procedures, and agree to jointly work together to develop a solution to maximise such recovery for implementation within (12) months of contract award.

56.1.4 The Contractor shall be responsible for issuing in a timely manner any end user certificate(s) required in order to perform any of its obligations under this Contract.

56.1.5 The Contractor shall inform the Authority at the earliest opportunity of the route by which it intends to obtain export licence approval in order to satisfy delivery requirements under the Contract. In particular, where the Contractor chooses to use a technical assistance agreement (**TAA**) or manufacturing licence agreement (**MLA**) to support its obligations provided in this Contract, the Contractor shall promptly notify the Authority to such effect and shall not seek approval for the TAA or MLA from the Government concerned without first negotiating and agreeing its contents with the Authority.

56.2 International Traffic in Arms Regulations (ITAR)

56.2.1 The Contractor has advised the Authority in accordance with DEFCON 528 (Edn 07/21) that the Contractor intends to supply Articles of US origin, the export of which from the USA is subject to control under the US International Traffic in Arms Regulations (**ITAR**). The Authority hereby agrees that such export of these Articles under the auspices of the US-UK Defence Trade Co-operation Treaty (the **Treaty**) is not applicable.

56.2.2 Where any of the Articles are subject to ITAR control on delivery to the Authority under the Contract and the Contractor or one of its suppliers subsequently wishes to convert that control to that available under the Treaty instead, either during the Contract term or at any time thereafter, the Contractor or its Sub-Contractor (as the case may be) shall not do so without first obtaining the prior written consent of the Authority.

57 Place of Business

57.1 Manufacture

The Contractor shall not change the place of manufacture under any Key Sub-Contract of the Articles manufactured to support delivery of the Services without the prior written consent of the Authority (not to be unreasonably withheld).

57.2 General

In the event of any proposed change in the Contractor's place of work (or any proposed change in any Key Sub-Contractor's place of work (other than to the extent subject to Clause 57.1) during the Contract Term, the Contractor shall notify the Authority's Commercial Branch to such effect with immediate effect on becoming aware of such a proposed change, with a copy to the Authority's Project Manager, but shall not be required to seek and obtain the prior written consent of the Authority to such change.

58 Security Aspects

58.1 DEFCON 659A

For the purposes of clause 1 of DEFCON 659A (Edn 09/21), the **SECRET Matter** of the Contract shall be as defined in the Security Aspects Letter at Annex V. Any changes to these classifications will be notified by the Authority's Project Manager to whom any enquiries about the Security Aspects Letter shall be addressed.

58.2 DEFCON 660

For the purposes of DEFCON 660 (Edn 12/15), the aspects designated OFFICIAL-SENSITIVE shall be as defined in the Security Aspects Letter at Annex V (*Security Aspects Letter*), which also sets out the official security conditions. Any changes in these classifications will be notified by the Authority's Project Manager, to whom enquiries about the Security Aspects Letter shall be addressed.

59 Sustainable Procurement

59.1 The Contractor shall take all reasonable steps to procure the observance of the economic, social and environmental Law related to the subject matter or the execution of the Contract by any servants, employees or agents of the Contractor and any Sub-Contractors engaged in the performance of this Contract.

59.2 The Contractor shall take all reasonable steps to ensure that all activities under this Contract shall comply with certified environmental management standards based on ISO 14001:2004.

60 Shared Data Environment

The Authority and the Contractor shall operate a Shared Data Environment in accordance with and Annex Y (*DEFFORM 687C (Electronic Information Sharing Agreement (EISA))*).

61 Limitation of Liability

61.1 Definitions

In this Clause 61 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

Charges means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor's other obligations under this Contract, as determined in accordance with this Contract.

Claims means all claims and rights of the Outgoing Contractor to claim under any warranty, guarantee, indemnity, representation or assurance express or implied given by any third party, or under any policy of insurance taken out by the Outgoing Contractor, or by law, in relation to any of the assets.

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

- (a) the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the UK General Data Protection Regulation or UK GDPR).
- (b) the Data Protection Act 2018.

- (c) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
- (d) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party.

Default means any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or negligence of the relevant Party, whether arising by reason of default, act, omission, negligence or statement or by any other cause whatsoever including:

- (a) in the case of the Authority, of its Representatives and, subject to the terms of Clause (b), any Authority Contractor or its employees, servants and agents; or
- (b) in the case of the Contractor, of any Contractor Personnel or any Sub-Contractor or Affiliate of the Contractor or their respective employees, servants and agents.

Law means any applicable law, statute, by-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

Losses means all losses, liabilities, damages, costs and expenses (including legal fees on solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

Required Insurances means the insurances as set out in Annex AJ and any subsequent renewed or replacement insurances placed in accordance with Clause 61A.

Term means the period commencing on the Commencement Date and ending on the expiry 6 years following the expiry of this Contract or 6 years from earlier termination of this Contract.

Uninsurable means that it has been agreed or determined that:

- (a) insurance in respects of a risk that would otherwise be covered by the Required Insurances; and/or
- (b) a term or condition that is required to be included in a policy for any Required Insurances,

is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing.

61.2 Unlimited liabilities

61.2.1 Neither Party limits its liability for:

- (a) death or personal injury;

- (b) fraud or fraudulent misrepresentation or corruption by its employees including, in respect of the Contractor by it, its agents or sub-contractors (as applicable);
- (c) gross negligence, wilful default or abandonment; and
- (d) any liability to the extent it cannot be limited or excluded by law including under the Consumer Rights Act 2015 or the Supply of Goods and Services Act 1982.

61.2.2 The financial caps on the Contractor's liability set out in Clause 61.3 below shall not apply to the following in respect of which the Contractor's liability under this Contract will be considered unlimited:

- (a) any costs or expenses which the Contractor is obliged to or does expend in carrying out its obligations under this Contract including the correction of any non-conforming Services to achieve requirements of this Contract;
- (b) Not Used;
- (c) any Losses incurred by or Claims made against the Authority due to breach of statutory duty which arose out of or in consequence of any contravention by the Contractor of this Contract;
- (d) any Losses recoverable by the Contractor under the Required Insurances (including amounts for which the Contractor is liable pursuant to Clause 61A.4 (*Deductibles*);
- (e) the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);
- (f) any indemnity given by the Contractor in relation to TUPE under Annex AB (TUPE) which is not expressed as a capped liability;
- (g) the Contractor's indemnity in relation to Information at Clause 55.4 (*Confidentiality*);
- (h) any Losses incurred by the Authority due to a breach by the Contractor of DEFCON 532Bor Data Protection Legislation;
- (i) for the avoidance of doubt any payments due from the Contractor to the Authority in accordance with DEFCON 811 or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause 61.3 below;
- (j) the Authority's right to apply for an order for injunctive relief or specific performance or seek damages in respect thereof;
- (k) the Contractor's liability to pay any taxes as expressly provided by this Contract; or
- (l) any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract.

61.2.3 The financial caps on the Authority's liability set out in Clause 61.4 below shall not apply to the following in respect of which the Authority's liability under this Contract will be considered unlimited:

- (a) the Authority's indemnities in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);
- (b) any indemnity given by the Authority in relation to TUPE under Annex AB (TUPE) which is not expressed as a capped liability;
- (c) the Authority's indemnity in relation to Information at Clause 55.4 (*Confidentiality*);
- (d) any Losses incurred by or Claims made against the Contractor due to breach of statutory duty which arose out of or in consequence of any contravention by the Authority of this Contract; and
- (e) for the avoidance of doubt any payments due from the Authority to the Contractor in accordance with DEFCON 811 or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause 61.4 below.

61.3 Financial limits

61.3.1 Contractor Liability

Subject to Clauses 61.2.1 (*Unlimited Liabilities*), 61.2.2 (*Consequential Loss*) and 61.5 (*Additional Liability Provisions*) and to the maximum extent permitted by Law:

- (a) the Contractor's aggregate liability in each Contract Year in respect of Losses relating to physical damage to Government Establishments, or Third-Party Contractor Property, that are caused by Defaults of the Contractor occurring in that Contract Year, including in the indemnity in Clause 3 of DEFCON 76 (Contractor's Personnel at Government Establishments), shall in no event exceed **[Information Redacted]**;
- (b) the Contractor's aggregate liability in each Contract Year in respect of Losses relating to the indemnity under DEFCON 611 (Issued Property), shall in no event exceed **[Information Redacted]**
- (c) the Contractor's aggregate liability in each Contract Year in respect of Losses relating to the indemnity under DEFCON 612 (Loss of or Damage to the Articles), shall in no event exceed **[Information Redacted]**
- (d) the Contractor's aggregate liability in each Contract Year in respect of the indemnity given by the Contractor pursuant to Clause 37.9 (*Environment*) shall in no event exceed **[Information Redacted]**; and
- (e) the Contractor's aggregate liability in each Contract Year in respect of all other Losses incurred by the Authority whether arising under contract, negligence, misrepresentation or otherwise under or in connection with this Contract as a result of Defaults by the Contractor shall be limited to:

- (i) in relation to Defaults occurring in the first Contract Year (which, for the purposes of this Clause, includes any Mobilisation Period), an amount equal to **[Information Redacted]** of the Annual [Core Price] for that first Contract Year as set out in Annex G (Contract Payment Plan);
- (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to **[Information Redacted]** of the Annual [Core Price] in the Contract Year the Default occurred in as set out in Annex G (Contract Payment Plan); and
- (iii) in relation to Defaults occurring after the end of the Contract Period, an amount equal to **[Information Redacted]** of the Annual [Core Price] in the twelve (12) month period immediately prior to the last day of the Contract Period as set out in Annex G (Contract Payment Plan),

provided that such caps shall not apply to the extent that the Contractor is able to recover further Losses pursuant to the Required Insurances.

61.3.2 Authority Liability

- (a) Subject to Clauses 61.2.3 (*Unlimited Liabilities*), and 61.2.2 (*Consequential Loss*), 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 Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- (b) The Authority shall not have any liability to the Contractor in respect of any Default of an Authority Contractor unless:
 - (i) it results in the Authority breaching an obligation in this Contract; and
 - (ii) the relevant Authority Contractor is not a Contractor Group Member.
- (c) Clause 61.3.1(a) shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

61.4 Consequential loss

61.4.1 Subject to Clauses 61.2 and 61.4.2, 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 production;

- (f) loss of business opportunities (whether direct or indirect); or
- (g) loss of contract),

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

61.4.2 The provisions of Clause 61.4 shall not restrict the either party's ability to recover (subject to, in the case of the Contractor, the limit of liability in Clause 61.3.1(e) and in respect of the Authority Clause 61.3.2) any of the following Losses incurred by either the Contractor or the Authority (as appropriate) to the extent that they arise as a result of a Default by either the Contractor or the Authority (as appropriate):

- (a) any additional operational and administrative costs and expenses arising from the Default, including any costs paid or payable by non-defaulting party:
 - (i) to any third party;
 - (ii) subject to Clause 61.4.2(a)(iii), in relation to the Authority, for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables;
 - (iii) in relation to the Contractor, for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables due to any action or omission by the Authority; and
 - (iv) relating to time spent by or on behalf of the non-defaulting Party in dealing with the consequences of the Default;
- (b) any or all wasted expenditure and Losses incurred by the non-defaulting Party arising from the Default, including wasted management time;
- (c) in relation to the Authority only, and in respect of the operation of Clause 19.6, the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (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) in relation to either Party, any Losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of a Party's data, or other data or software, including, to the extent the relevant Party's data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such data, data or software;
- (e) in relation to the Authority only, damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611 (but in respect of this Cause 61.4.2(e), the liability limits set out in Clause 61.3.1(a) and 61.3.1(b) as appropriate);

- (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 non-defaulting Party in relation to the non-defaulting party's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- (h) any fine or penalty incurred by the non-defaulting Party pursuant to Law and any costs incurred by the non-defaulting Party in defending any proceedings which result in such fine or penalty; or
- (i) in relation to the Authority only, any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

61.5 Additional Liability Provisions

61.5.1 General

- (a) Where the Authority or the Contractor is indemnified by, as appropriate, the Contractor or the Authority under this Contract, the Authority or the Contractor (as the case may be) shall mitigate any Losses for which it is seeking indemnification.
- (b) All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.
- (c) The provisions in this Clause 61 shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Contract.

61.5.2 No double recovery

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 either Party shall be entitled to use (singly or together) such rights and remedies available to it so as to recover the full extent of any recoverable Losses suffered or incurred, including any remedies the Authority may have against any guarantor.

61.5.3 Contractor responsible for Authority offence

Where a Default of the Contractor or any Contractor Personnel causes the Authority to commit an offence, then the Contractor shall immediately take any measure necessary to ensure that that act, omission or default no longer causes the Authority to commit that offence.

61.5.4 No impact on other Authority rights or remedies

- (a) The Contractor's liability to the Authority arising under any indemnity in this Contract shall be without prejudice to any other right or remedy available to the Authority and in particular shall not prejudice in any way the ability of the Authority to enforce any bond,

guarantee or other security given pursuant to this Contract at any time and in any manner whatsoever.

- (b) The Parties acknowledge that Clause 13.8 shall be the sole financial remedy available to the Authority in respect of any BRONZE rating but that in respect of any other breach or failure under this Contract due to the Contractor any remedy available at Law will be available to the Authority. Accordingly, the application of Clause 13.2 to 13.4 in respect of the Contractor's failure of performance is without prejudice to any other Authority remedy or cause of action under, or in relation to, this Contract.

61.5.5 Authority discretion to reinstate property

- (a) The Authority shall not be obliged to reinstate or replace any building, other structure, plant, machinery, equipment or furnishings comprised in a relevant Government Establishment which may be destroyed or damaged or to make any replacement or alternative provision available to the Contractor in the event of any such damage or destruction.
- (b) If the Authority elects not to reinstate or replace in accordance with Clause 61.5.5(a), and as a consequence the Contractor is unable to provide any of the Services in accordance with the requirements of this Contract without incurring additional costs which cannot reasonably be mitigated by the Contractor then such additional costs shall be recoverable by the Contractor as an Additional Service under Clause 9.
- (c) All monies (including professional fees, demolition, removing debris, making safe and shoring up) payable under any Required Insurance (or by Contractor due to a failure to comply with its insurance obligations) in each case in respect of damage to or destruction of any part of the relevant Government Establishment shall be paid to the Authority for its own use and benefit.
- (d) Any monies received by the Authority pursuant to Clause 61.5.5(c) may, in the sole discretion of the Authority, be applied by the Authority in:
 - (i) the reinstatement of the relevant Government Establishment; or
 - (ii) constructing such building or buildings or installations fixtures and fittings as the Authority may consider necessary, appropriate or desirable to construct.

61.5.6 Rectification of damage to Entitled Vessels

The Authority shall not be obliged to reinstate, replace or repair Entitled Vessels which may be destroyed or damaged.

61A INSURANCES

61A.1 Obligation on the Contractor to take out insurance

61A.1.1 Without prejudice to its obligations to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall, from the Effective Date, take out and maintain, or procure the taking out and maintenance of the Required Insurances and any other insurance required by law or relevant

regulation throughout the Term. The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

61A.1.2 Any change to this Clause 61A.1 or the Required Insurances shall be effected in accordance with Clause 50 (Amendments to Contract).

61A.2 Contractor insurance obligations

61A.2.1 The Required Insurances referred to in Clause 61A.1.1 shall be taken out and maintained with insurers who are of good financial standing, appropriately regulated and of good repute in the international insurance market.

61A.2.2 The Contractor shall ensure that where any of the Required Insurances are renewed or replaced during the Contract Period, such renewed or replaced policy shall be (unless a risk has become Uninsurable) on substantially the same terms and provide substantially the same cover as the Required Insurances did on the Commencement Date. To the extent any risk previously covered by a Required Insurance has become Uninsurable during the Contract Period, the Parties will meet as soon as reasonably practicable to discuss other ways to mitigate such risk and shall engage through the Change Control Procedure as required.

61A.2.3 The Contractor shall, upon the Effective Date and within fifteen (15) calendar days after the renewal of any of the Required Insurances, provide the Authority with evidence (in a form satisfactory to the Authority acting reasonably):

- (a) that the Required Insurances are being maintained in accordance with Clause 61A.1 and are in full force and effect and meet the requirements of Clause 61A and Annex AJ (*Required Insurances*); and
- (b) that the premiums payable under them have been paid or are in the process of being paid to insurers.

61A.2.4 The supply to the Authority of any evidence of insurance cover in compliance with the requirements of Clause 61A.2.3 above shall not imply nor constitute acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.

61A.2.5 The Contractor shall notify the Authority at least ten (10) calendar days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. The Contractor's obligation under this Clause 61A.2.5 shall not apply where termination of any Required Insurance occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Clause 61 A.

61A.2.6 If the Contractor receives notification from an insurer under any relevant Required Insurance of any actual cancellation, suspension or termination of such Required Insurance, or notice of its intention to take any such step, the Contractor shall, without prejudice to its obligation to maintain the Required Insurances, promptly notify the Authority in writing of receipt of such intended or actual cancellation, suspension, or termination.

61A.2.7 The Contractor shall notify the Authority of any material change to the Required Insurances. In such instances the Parties shall review and discuss these proposed changes and seek to agree any further

actions needed (acting reasonably) to ensure that the relevant policy is on substantially the same terms as and provides an equivalent level of cover to the equivalent Required Insurance as it was at the Commencement Date . The insurance shall be procured in the International insurance market and based on good industry practices for a company operating in this industrial arena.

61A.2.8 The Contractor (which for the avoidance of doubt shall include any Sub-Contractor who is part of the Contractor's Group) shall not (and the Contractor shall procure that none of its Sub-Contractors of any tier (and who are not part of the Contractor's Group) 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.

61A.2.9 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or 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 the Services or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including providing information and documentation in a timely manner.

61A.2.10 Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident):

- (a) after occurrence or circumstances which may give rise to a claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this Contract and the Required Insurances, of which the Contractor is or becomes aware; and
- (b) if the occurrence or circumstances may give rise to any claim in connection with this Contract which may be in excess of the limits of Required Insurances,

and shall notify the Authority Contract Manager within ten (10) Business Days of making the relevant claim under any policy for the Required Insurances.

61A.2.11 The Contractor shall maintain a written register of all losses or occurrences which result in a claim under the Required Insurances in connection with this Contract and shall allow the Authority to review such register at any time.

61A.2.12 Where any Required Insurance requires payment of a premium, the Contractor shall be responsible for payment of, and shall pay, such premium.

61A.2.13 The Contractor shall:

- (a) without limiting any specific requirements in this Contract, 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 but not limited to the investigation and reporting of relevant insured claims to insurers;
- (b) where relevant, discharge all its obligations under the Insurance Act 2015 when placing, renewing, amending or maintaining any insurances required by this Contract including complying with the duty of fair presentation to insurers and taking the actions needed to protect the Authority's separate interests; and

- (c) use reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the Authority are effected or maintained shall maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances) until the date specified in Annex AJ (*Required Insurances*).

61A.3 Consequences of failure by the Contractor to comply with Clauses 61A.1 and 61A.2

If the Contractor is in breach of Clause 61A (*Obligation on Contractor to take out insurance*), the Authority may elect, but shall not be obliged, to purchase any insurance or pay any insurance premiums which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, or itself procure, provide or arrange such insurance, and in either case the Authority shall be entitled to recover from the Contractor the cost of such premiums, insurance premium tax and other reasonable costs incurred in connection therewith as a debt due to the Authority from the Contractor.

61A.4 Deductibles

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 which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

62 Not Used

63 Compliance

63.1 Fraud and Bribery

63.1.1 The Contractor will comply (and shall procure the compliance of the Contractor's Group and use its reasonable endeavours to procure the compliance of the Key Sub-Contractors with) with the requirements of DEFCON 520 (**Edn 08/21**) (***Corrupt Gifts and Payments of Commission***).

63.1.2 **In addition to the obligations referred to in Clause 61.1(a) above, the Contractor shall during the Contract Term:**

- (a) establish, maintain and enforce, and use all reasonable endeavours to procure that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Contractor do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 63.1.1 and make such records available to the Authority on request; and

- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

63.1.3 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach Clause 61.1(a), or has reason to believe that it has or any of its personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

63.1.4 If the Contractor makes a notification to the Authority pursuant to Clause 63.1.3 the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 41 (**Access, Audit and Inspection**) and DEFCON 812 (Edn 04/15) (*Single Source Open Book*).

63.2 Equality

The Contractor will comply with the requirements of DEFCON 516 (Edn 04/12) (*Equality*).

63.3 Statutory Requirements

The Contractor shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) the National Security and Investment Act 2021.

64 Qualifying Defence Contract

64.1 The Parties agree that the Contract is a Qualifying Defence Contract for the purposes of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014 (SI 3337).

64.2 The Contractor shall:

- (a) comply with its obligations under the Single Source Rules so far as they relate to this Contract or its implementation; and
- (b) procure that the members of the Contractor's Group do all that is needed to enable the Contractor to comply with its obligations under the Single Source Rules so far as they relate to this Contract or its implementation.

64.3 Each Party shall notify the other Party of any breach of which it becomes aware of the Single Source Rules in relation to this Contract or its implementation.

64.4 Without prejudice to Section 22 of the Defence Reform Act, if it is determined by the Single Source Regulations Office (SSRO) and validated and agreed by the Contractor that any amount that has been paid or would (but for this Clause 64.4) be payable to the Contractor pursuant to a provision of this Contract contravenes a provision of the Single Source Contract Regulations, that amount shall (notwithstanding such provision of this Contract) be refunded to the Authority by the Contractor or (as the case may be) not be payable by the Authority to the Contractor.

65 Single Source Contracting Regulations (SSCR) Contract Reporting

65.1 The Contractor must submit all contract reports pursuant to the Single Source Contract Regulations 2014 (SI 3337) in accordance with Annex E (*Deliverable Documentation*) electronically using a single workbook of Microsoft Excel worksheets. The reporting templates are available as Statutory Guidance issued by the SSRO on their website.

65.2 The Contractor is solely responsible for completion of such reports, although some report content will need to be agreed in advance with the Authority. At the time a report is due the Contractor must use the latest version of the template. No deviation or change from the templates can be agreed.

65.3 Contract reports will be issued to the Single Source Advisory Team (SSAT) and the SSRO. The SSAT will issue the report to the Authority's Commercial Officer once they are satisfied the report is complete and compliant.

66 Entire Agreement

66.1 This Contract together with the Parent Company Guarantee [and any executed Business Tenancy Agreements in relation to the Contract Deliverables and/or Services] 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 condition shall not exclude liability in respect of any fraudulent misrepresentation.

66.2 No other term, express or implied, forms part of this Contract. Save as expressly agreed in this Contract, no usage, custom or course of dealing forms part of or affects this Contract.

67 Severability

67.1 If any provision of this Contract is held to be invalid, illegal or unenforceable for any reason 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 this Contract but without invalidating any of the remaining provisions of this Contract; and
- (b) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

68 Legal Relationship between the Parties

68.1 No partnership

The Parties do not intend this Contract to create any partnership between them as a matter of law. Accordingly, nothing in this Contract or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association between the Parties. Nothing in this Contract is intended to and shall not be construed or give rise to the creation or constitution of a partnership as envisaged in the Partnership Act of 1890 or a joint venture or other business organisation or agency arrangement of any kind. Neither the Authority nor the Contractor shall have the authority to bind the other without that other Party's separate prior written agreement in accordance with this Contract.

68.2 Independent Contractor

The Contractor shall at all times be an independent contractor and nothing in this Contract shall be construed as creating the relationship of employer and employee between the Authority and the Contractor or any of the Contractor's Employees. Neither the Contractor, any member of the Contractor Group nor any of its Sub-Contractors nor its or their respective employees shall at any time hold itself or themselves out to be the employee of the Authority and neither the Contractor nor any of, or any member of the Contractor Group its or its Sub-Contractor's employee any member of the Contractor Group nor any of its Sub-Contractors nor its or their respective employees shall be entitled to any of the benefits provided by the Authority to its established or unestablished officers and staff.

68.3 No delegation

No provision of this Contract shall be construed as a delegation by the Authority of any of the Authority's statutory authority to the Contractor or any member of the Contractor Group.

68.4 No Agency

Unless expressly agreed otherwise in this Contract, none of the Contractor or any other Contractor Group Member shall be or be deemed to be an agent of the Authority and the Contractor shall procure that neither itself or any other member of the Contractor Group will hold itself out as having authority or power to bind the Authority in any way. Neither the Contractor nor any other member of the Contractor Group shall have the benefit of any immunity of H.M. Government and, unless otherwise agreed by the Authority, the Contractor shall (and shall procure that all relevant members of the Contractor Group shall) apply for and obtain all consents, licences and permissions which the Contractor and any other member of the Contractor Group would otherwise be obliged to obtain under any law on the basis that it does not have the benefit of any immunity of H.M. Government.

69 Remedies and Waivers

69.1 The terms of DEFCON 527 (Edn 09/97) (*Waiver*) shall apply to this Contract.

69.2 The rights and remedies arising from this Contract are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise except to the extent this Contract expressly states otherwise.

70 Further Assurance

Each of the Parties shall, at its own cost, do all further acts and things and execute and deliver all instruments as shall be reasonably necessary for the carrying out of their respective obligations under this Contract.

71 Governing Law and Jurisdiction

- 71.1 English law governs this Contract, its interpretation and any non-contractual obligations arising from or connected with it.
- 71.2 Subject to the Dispute Resolution Procedure, the Parties irrevocably agree that the English courts are to have jurisdiction to settle any claim or matter arising out of or in connection with this Contract. However, nothing in this Clause shall limit the right of either the Authority or the Contractor to take any suit, action or proceeding arising out of or in connection with this Contract (**Proceedings**) against the other Party in any other court of competent jurisdiction, nor shall the taking of any Proceedings in any one or more jurisdictions, prevent Proceedings being taken in any other jurisdiction, whether concurrently or not.
- 71.3 Each Party agrees that a judgment or order of an English court in a dispute falling within Clause 71.2 (without limiting any rights that such Party may have to appeal a judgment or order) is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.