

MODEL SERVICES CONTRACT

DATED

2025

(1) SECRETARY OF STATE FOR DEFENCE

and

(2) IBM UNITED KINGDOM LIMITED

CONTRACT number 711315450

relating to the supply of a
Defence Equipment Engineering and Asset Management solution



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SCHEDULES

1. Definitions
2. Services Description
3. Performance Levels
4. Standards
5. Security Management
6. Insurance Requirements
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9. Commercially Sensitive Information
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12. Software
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15. Charges and Invoicing
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33. Earned Value Management
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THIS CONTRACT is made on

2025

BETWEEN:

- (1) **SECRETARY OF STATE FOR DEFENCE** of Main Building, Whitehall, London SW1A 2HB (the “**Authority**”); and
- (2) **IBM UNITED KINGDOM LIMITED** a company registered in England under company number 00741598 whose registered office is at Building C, IBM Hursley Office, Hursley Park Road, Winchester, Hampshire, United Kingdom, SO21 2JN (the “**Supplier**”)

(each a “**Party**” and together the “**Parties**”).

INTRODUCTION

- (A) *On 8 March 2023 the Authority advertised on Find a Tender (reference 704976451), inviting prospective suppliers to submit proposals for the supply of a Defence Equipment Engineering and Asset Management solution.*
- (B) *On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.*
- (C) *Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.*

IT IS AGREED as follows:

SECTION A – PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 Interpretation is as set out in Schedule 1 (Definitions).
- 1.3 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - (a) the Clauses and Schedule 1 (Definitions);
 - (b) Schedules 2 (Services Description) and 3 (Performance Levels) and their Annexes;
 - (c) any other Schedules and their Annexes (other than Schedule 8 (Supplier Solution) and its Annexes); and
 - (d) Schedule 8 (Supplier Solution) and its Annexes (if any).
- 1.4 The Schedules and their Annexes form part of this Contract.
- 1.5 In entering into this Contract the Authority is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:

- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (i) the Authority Requirements;
 - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (iii) the operating processes and procedures and the working methods of the Authority;
 - (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
 - (v) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Services; and
- (d) it has advised the Authority in writing of:
 - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (ii) the actions needed to remedy each such unsuitable aspect; and
 - (iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,and such actions, timetable and costs are fully reflected in this Contract, including the Services Description and/or Authority Responsibilities as applicable.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any unsuitable aspects of the Operating Environment;

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- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 15 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 **WARRANTIES**

3.1 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).

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Contract;
- (c) this Contract is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Contract;
- (e) it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- (f) its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms

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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);

- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Contract;
 - (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
 - (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
 - (k) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
 - (l) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - (m) within the previous 12 months, no Financial Distress Events 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.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall



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immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

- 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4 TERM

4.1 This Contract shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 23 (*Publicity and Branding*), 24 (*Limitations on Liability*), 36 (*Waiver and Cumulative Remedies*), 37 (*Relationship of the Parties*), 39 (*Severance*), 41 (*Entire Agreement*), 42 (*Third Party Rights*), 43 (*Notices*), 44 (*Disputes*) and 45 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 32 (*Termination Rights*), terminate:
 - (i) at the end of the Initial Term; or
 - (ii) if the Authority elects to extend the Term for the Continuing Services by giving the Supplier at least thirty (30) Working Days' notice before the end of the then current Term, at the end of the Extension Period (or such period of one or more years from the expiry of the then current Term as shall be notified to the Supplier, provided that the total duration of any extension to the Initial Term shall not exceed the Extension Period).

Condition Precedent

- 4.2 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 23 (*Publicity and Branding*), 24 (*Limitations on Liability*), 36 (*Waiver and Cumulative Remedies*), 37 (*Relationship of the Parties*), 39 (*Severance*), 41 (*Entire Agreement*), 42 (*Third Party Rights*), 43 (*Notices*), 44 (*Disputes*) and 45 (*Governing Law and Jurisdiction*), this Contract is conditional upon the valid execution and delivery to the Authority of the Admission Agreement (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Contract then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.2:
- (a) this Contract shall automatically cease and shall not come into effect; and
 - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.2 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances

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which are likely to result in the condition not being satisfied by the date set out in Clause 4.3.

5 SERVICES

Standard of Services

5.1 The Supplier shall provide the Services (as more particularly set out in Schedule 2 (*Services Description*)) including:

- (a) from the Effective Date, the Development Services to develop the Supplier Solution;
- (b) from (and including) the Implementation Services Commencement Date, the Implementation Services to implement the Supplier Solution;
- (c) the Training Services;
- (d) from (and including) the relevant Operational Service Commencement Date, the Operational Services;
- (a) in accordance with the Exit Plan, the Exit Services;
- (b) the Services set out in the Service Catalogue, where such Services are ordered by the Authority; and
- (c) the Continuing Services, where the Contract continues beyond the Initial Term.

5.2 The Supplier shall ensure that:

- (a) the Services:
 - (i) comply in all respects with the Services Description; and
 - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Contract.

5.3 The Supplier shall:

- (a) perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Baseline Security Requirements;
 - (v) the Quality Plans;
 - (vi) the Authority IT Strategy; and
 - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi); and

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- (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

5.5 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 5 (*Security Management*)) shall notify the Authority 3 months before the release of any new Software or Upgrade;
 - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
 - (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);

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- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Contract;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with any Other Supplier notified to the Supplier by the Authority from time to time by providing:
 - (i) reasonable information (including any Documentation);
 - (ii) advice; and
 - (iii) reasonable assistance,

in connection with the Services to any such Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier in accordance with the following collaborative working principles:

- (A) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
 - (B) being open, transparent and responsive in sharing relevant and accurate information with such Other Suppliers;
 - (C) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with such Other Suppliers;
 - (D) providing reasonable cooperation, support, information and assistance to such Other Suppliers in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
 - (E) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle;
- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;

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- (h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5(g);
 - (i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
 - (j) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
 - (k) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
 - (l) notify the Authority in writing within 10 Working Days of their occurrence, of any 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;
 - (m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority; and
 - (n) manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses 17.2 and 17.3 (*IPRs Indemnities*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- (a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - (b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(j) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - (c) meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

UK Import and Export Licences

5.7A If, in the performance of the Contract, the Supplier is required to import into or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK Licence is required, the Supplier is responsible for applying for and maintaining that Licence.

Obtaining a Licence – Authority obligations

5.7B Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Supplier with sufficient information, certification, documentation and other reasonable assistance to obtain Licences from the UK or a foreign government in respect of the performance of the Contract.

Obtaining a Licence from a foreign government – Supplier obligations

5.7C The Supplier shall consult the Authority as soon as reasonably practicable if a Licence is required from a foreign government. Where the Supplier is the applicant for obtaining Licences the Supplier shall ensure that when Restrictions apply to all or part of any Supplier Deliverables (which for the purposes of this Clause 5.7C shall also include information, technical data, software and Services), unless otherwise agreed with the Authority, they shall identify in the application:

- a. the end user as: The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland ("**UK MOD**"); and
- b. the end use as: For the Purposes of UK MOD; and
- c. include in the submission for the Licence a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

5.7D The Supplier shall take expeditious action to arrange the application for the foreign Licences required to import or export any Materiel not supplied by or on behalf of the Authority or perform any Services for which a Licence is required by a foreign government; this includes, but is not limited to, compliance with the ITAR, EAR, FMS and any applicable UK-US agreements.

5.7E The Supplier shall include the dependencies for the Licence application, grant and maintenance in the Risk Register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan, the Supplier shall inform the Authority Representative accordingly.

5.7F During the Term of the Contract and for a period of up to 2 years from expiry or termination of the Contract, the Authority may make a written request to the Supplier to seek a variation to the conditions of a foreign Licence to enable the Authority to re-export or re-transfer a licensed or authorised Materiel from the UK and/or to a non-licensed third party. If the Authority makes such a request, it will consult with the Supplier before making a determination on which party is best placed to seek a variation. Where, the Supplier is best placed to seek a variation:

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- (a) the Supplier shall expeditiously file an application to seek a variation of the applicable Licence in accordance with the procedures of the foreign government or raise their objection to the request. Where the Supplier has an objection to the variation request, the Parties shall meet within 5 Working Days to resolve the issue and should they fail to do so, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export or import control subject matter experts; and
- (b) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance necessary to support the application to seek a variation.

5.7G Where the Authority determines that it is best placed to make such a request for variation, the Supplier shall provide sufficient information, certification, documentation and other reasonable assistance necessary to support the Authority to make the application for the requested variation.

5.7H Where the Authority invokes Clause 5.7F or 5.7G the Authority will pay the Supplier a fair and reasonable Charge for this service based on the cost of providing it.

5.7I The Supplier shall use all reasonable endeavours to incorporate in each relevant subcontract equivalent terms regarding foreign export and/or import controls to those set out in Clauses 5.7A – 5.7S. Where it is not possible to include equivalent terms to those set out in Clauses 5.7A – 5.7S, the Supplier shall promptly report that fact and the circumstances to the Authority.

Providing Information – Authority obligations

5.7J The Authority shall use reasonable endeavours to identify any Restrictions that apply to Materiel to be provided to the Supplier as Government Furnished Assets.

5.7K Where the Authority is to provide Materiel necessary to enable the Supplier to perform the Contract, or in respect of which the Services are to be provided, and that Materiel is subject to Restrictions, the Authority shall provide a completed DEFFORM 528 (and a copy of any applicable Licence, where available) to the Supplier as soon as reasonably practicable and no later than 30 days prior to the delivery of such Materiel to the Supplier.

5.7L In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate then the Authority shall provide, as soon as reasonably practicable, a new or revised DEFFORM 528.

5.7M Where:

- (a) Restrictions are advised by the Authority to the Supplier in a DEFFORM 528 provided pursuant to Clause 5.7K or 5.7L or both;
or
- (a) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate,

the Authority and the Supplier shall promptly agree on the best course of action and implement it to mitigate the impact of such incorrect or inaccurate

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information under the terms of Schedule 22 (*Change Control Procedure*). If there is no alternative or appropriate mitigation available, the Authority may terminate the Contract. Termination under these circumstances will be under Clause 32.1(a).

- 5.7N Provided the Supplier takes such steps as are reasonable to mitigate the impact, the Supplier shall be relieved from their obligations to perform those elements of the Contract directly affected by the Restrictions or provision of incorrect or incomplete information.

Providing Information – Supplier obligations

- 5.7O The Supplier shall use reasonable endeavours to identify whether any Supplier Deliverable is subject to any foreign Licence including those that impose or will impose Restrictions. During the term of the Contract the Supplier shall inform the Authority of any foreign Licence and/or any Restrictions not already disclosed at Contract award or relevant amendment. This does not include the Intellectual Property-specific restrictions of the type referred to in Schedule 32 (*Intellectual Property Rights*).
- 5.7P The Supplier shall notify the Authority of all, or any part of the Supplier Deliverables identified within Clause 5.7O, by submitting a DEFFORM 528 or other mutually agreed alternative format as soon as reasonably practicable and no less than 30 days prior to delivery of the Supplier Deliverables. Such notification shall include an update on the validity of all previous information submitted and shall include any Restrictions (not already disclosed to the Authority) notified to the Supplier by any of their Sub-contractors, suppliers, or other third parties. The Supplier, within 10 Working Days (or such longer period as shall have been agreed in writing by the Parties) of such notification shall submit a proposal to the Authority outlining actions to mitigate the impact of such Restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal of or modification to the Restrictions, or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the Supplier within 10 Working Days (or such longer period as shall have been agreed in writing by the Parties) of receipt of the proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with the terms of Schedule 22 (*Change Control Procedure*) to implement the proposal.
- 5.7Q If the Supplier is unable to perform their obligations under the Contract due to the Restrictions notified in accordance with Clauses 5.7O and 5.7P and the Restrictions are not capable of being removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion amend the Contract in accordance with the Change Control Procedure or terminate the Contract. Except as set out in Clause 5.7R, in the event of termination in these circumstances, termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and those due under the Contract, costs incurred by the Supplier and benefits received by the Authority. The Parties, acting in good faith, shall use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to the Dispute Resolution Procedure.
- 5.7R Where the Supplier knew or ought reasonably to have known that the Deliverables were subject to the Restrictions notified in accordance with Clauses 5.7O and 5.7P, either at Contract award or at the date of submission of the most

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recent previous DEFFORM 528 to the Authority in accordance with Clause 5.7P, and failed to notify the Authority or the information disclosed was inaccurate or incomplete, the termination of the Contract will be in accordance with Clauses 32.1A and 32.1B and the provisions of Clause 5.7Q with respect to termination will not apply.

5.7S For a period of up to 2 years from expiry or termination of the Contract and in response to a specific request by the Authority, the Supplier shall notify the Authority as soon as reasonably practicable of any change to the Restrictions applicable to any Materiel provided under the Contract by issuing an updated DEFFORM 528 to the Authority.

No warranty on information provided

5.7T The Authority does not give any warranty or undertaking as to the completeness, accuracy, or fitness for any purpose of any of the Authority provided information relating to this Contract and/or the Services. Neither the Authority nor its agents or employees shall be liable to the Supplier in contract (save as expressly provided elsewhere in the Contract), tort, statute nor otherwise, as a result of any inaccuracy, omission, unfitness for any purpose, or inadequacy of any kind, in the Authority provided information.

Specially Written Software warranty

5.8 Without prejudice to Clauses 5.5 (*Supplier Covenants*) and 5.7 (*Services*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

- (a) be free from material design and programming errors;
- (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
- (c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

5.9 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

- (a) the existence of an unresolved Dispute; and/or
- (b) any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Contract under Clause 32.3 (*Termination by the Supplier*) for failure to pay undisputed Charges.

Power of attorney

5.10 By way of security for the performance of its obligations under Clauses 5.5(g) and 5.5(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to

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delegate one or more of the powers conferred on it by this Clause 5.10 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

- 5.11 The Authority shall comply with its responsibilities set out in Schedule 7 (*Authority Responsibilities*).

Change of Control

- 5.12 The Supplier shall notify the Authority at the address given in Clause 5.13, as soon as practicable, in writing of any intended, planned or actual change of Control of the Supplier, including any Sub-contractors. The Supplier shall include in any such notification any concerns the Supplier may have with the change of Control. Such concerns may include (but are not limited to) potential threats to national security and security of supply. The Supplier shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Supplier in the UK or other jurisdictions where the Supplier may be subject to legal sanction arising from issuing such a notice.

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

Mergers & Acquisitions Section
Strategic Supplier Management Team
Spruce 3b #1301
MOD Abbey Wood
Bristol
BS34 8JH

and emailed to: [REDACTED]

- 5.14 The Authority shall consider the notice of change of Control and advise the Supplier in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Supplier prior to contract award. The Supplier shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within fourteen (14) Working Days (or as agreed by the Parties) of receipt of the Authority's written concerns, for the Authority's consideration.
- 5.14A To the extent that the Authority considers that it is reasonable to do so, the Authority shall work with the Supplier to seek to resolve the Authority's concerns. The Supplier agrees to answer the Authority's questions or requests for clarification promptly.
- 5.14B Where the Authority considers, in its absolute discretion, that the risk may be appropriately mitigated, the Supplier shall implement any agreed mitigations promptly and, in any case, within the timescales required by the Authority. Where the Supplier fails to do so, the right to terminate in accordance with clause 32.1(b) shall apply.

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5.15 If the Authority exercises its right to terminate in accordance with Clause 32.1(b), the Supplier may request payment for any unavoidable commitments, liabilities or expenditure incurred by the Supplier in connection with the Contract up to the point of termination. The Authority shall act reasonably when assessing the Supplier's request for payment, although the Parties agree that the Authority shall retain the sole discretion, acting reasonably, to decide whether to make such requested payment. Any requests for payment by the Supplier must be submitted promptly and the Supplier shall demonstrate, to the reasonable satisfaction of the Authority, that such request for payment:

- (a) is reasonable and properly chargeable;
- (b) would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract; and
- (c) is fully supported by documentary evidence.

5.15A In the event that the Supplier fails to demonstrate any of the conditions set out at Clauses 5.15(a) to 5.15(c) above, the Authority may reject such request for payment.

5.16 Notification by the Supplier of any intended, planned or actual change of Control shall not prejudice the existing rights of the Authority or the Supplier under the Contract nor create or imply any rights of either the Supplier or the Authority additional to the Authority's rights set out in Clauses 5.12 to 5.16.

5.16A The Supplier shall include provisions equivalent to those set out in Clauses 5.12 to 5.16 above, in all relevant Sub-contracts.

6 IMPLEMENTATION

Quality Plans

6.1 The Supplier shall develop, within twenty (20) Working Days of the Delivery Start Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.

6.3 Following the approval by the Authority of the Quality Plans:

- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
- (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

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Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 13 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- (a) comply with the Implementation Plan; and
 - (b) ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
 - (i) notify the Authority in accordance with Clause 26.1 (*Rectification Plan Process*); and
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 27 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 14 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7 **SERVICE LEVELS**

- 7.1 The Supplier shall:
- (a) provide the Operational Services in such a manner so as to meet or exceed the Expected Service Level Targets for each Service Level from the Milestone Date for each relevant CPP Milestone; and
 - (b) comply with the provisions of Schedule 3 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Service Levels.

Service Level Defaults

- 7.2 If in any Service Period:
- (a) a Service Level Default occurs in respect of a Critical Service Level, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 15 (*Charges and Invoicing*);

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- (b) the Supplier fails to achieve the Minimum Service Level Target in respect of a Critical Service Level, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a)); and/or
- (c) a Service Level Default occurs in respect of a Key Measurement, the Supplier shall notify the Authority of the action (if any) it will take to rectify the Service Level Default and/or to prevent the Service Level Default from recurring.

7.3 Service Credits shall be the Authority's exclusive financial remedy for a Service Level Default in respect of a Critical Service Failure except where:

- (a) the Supplier has over the previous Quarter accrued Service Credits in excess of the Service Credit Cap;
- (b) the Service Level Default:
 - (i) breaches the relevant Minimum Service Level Target;
 - (ii) has arisen due to Wilful Misconduct by the Supplier or any Supplier Personnel; or
 - (iii) results in:
 - (A) the corruption or loss of any Authority Data (in which case the remedies under Clause 18.7 (*Authority Data and Security Requirements*) shall also be available); and/or
 - (B) the Authority being required to make a compensation payment to one or more third parties;
- (c) the Supplier has fraudulently misreported its performance against any Service Level; and/or
- (d) the Authority is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause 32.1(b) (*Termination by the Authority*).

Unacceptable CSL Failure

7.4 If in any Service Period an Unacceptable CSL Failure occurs:

- (a) the Authority shall be entitled to withhold and (subject to Clauses 7.4A and 7.4B) retain as compensation for the Unacceptable CSL Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of the Service Period impacted by such Unacceptable CSL Failure (such sum being "**Compensation for Unacceptable CSL Failure**"); and
- (b) if the Authority withholds and retains such Compensation for Unacceptable CSL Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

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provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Authority may have to terminate this Contract and/or to claim damages from the Supplier as a result of such Unacceptable CSL Failure.

7.4A Save as provided in Clause 7.4B, the Authority shall pay to the Supplier any sum withheld pursuant to Clause 7.4(a) in respect of an Unacceptable CSL Failure where in the two Service Periods following the Service Period in which such Unacceptable CSL Failure occurred, the Supplier meets all Critical Service Levels.

7.4B Where an Unacceptable CSL Failure is caused by the Supplier failing to achieve the Minimum Service Level Target in respect of any Critical Service Level relating to a Priority Level 1 or Priority Level 2 Incident, the maximum sum which the Authority shall be entitled to withhold and retain pursuant to Clause 7.4(a) in respect of such Unacceptable CSL Failure shall be fifteen (15) percent of the Service Charges in respect of the Service Period impacted by such Unacceptable CSL Failure and the payment provision in Clause 7.4A shall not apply to the sum withheld and retained in respect of such Unacceptable CSL Failure.

7.5 The Supplier:

- (a) agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable CSL Failure occurs; and
- (b) acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 32.1 or 32.2 (*Termination by the Authority*).

Changes to Service Levels and Service Credits

7.7 Not more than once in each Contract Year the Authority may, on giving the Supplier at least 3 months' notice:

- (a) change the weighting that applies in respect of one or more specific Critical Service Levels; and/or
- (b) convert one or more:
 - (i) Critical Service Levels into a Key Measurement; and/or
 - (ii) Key Measurements into a Critical Service Level (in which event the Authority shall also set out in the notice details of what will constitute the Expected Service Level Target and Minimum Service Level Target for the new Critical Service Level).

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7.8 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 7.7, or increase the Service Charges as a result of such changes provided that:

- (a) the total number of Critical Service Levels following such changes does not exceed fifteen (15);
- (b) the principal purpose of the changes is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and
- (c) there is no change to the Service Credit Cap.

8 SERVICES IMPROVEMENT

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Project Board once every 12 months on:

- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or reduction of operational risk;
- (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
- (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 EQUIPMENT AND MAINTENANCE

Supplier Equipment

- 9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 9.2 All the property of the Supplier and Supplier Personnel, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier whilst it is on any Authority Premises, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- (a) where any such loss of or damage to any of the Supplier's property located on Authority Premises was caused or contributed to by any act, neglect or default of any Authority servant, agent or contractor, then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
 - (b) where any property of the Supplier has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target Performance Levels.

Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the “**Maintenance Schedule**”) which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as “**Permitted Maintenance**”) in accordance with the Maintenance Schedule.
- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

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Supply of Goods

- 9.7 Where, as part of the Services, the Supplier is to sell goods or equipment (“**Goods**”) to the Authority:
- (a) the relevant Goods and their prices shall be as set out in the Service Catalogue;
 - (b) the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for 12 months after delivery;
 - (d) if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

Delivery

- 9.8 The Supplier shall deliver the Goods in accordance with the terms of the Contract.
- 9.9 Unless otherwise agreed, delivery of the Goods shall occur when the Goods have been handed over by the Supplier to the Authority or to the Authority Representative.
- 9.10 Unless otherwise agreed, where:
- (a) the Supplier is required under the Contract to carry out any Service in connection with any Issued Property; or
 - (b) the results of a Service which the Supplier is required to deliver are to be received by the Authority in the form of a Deliverable, such as a report or in the form of computer software,
- delivery of the Service, or the relevant part of the Service, shall occur when the Issued Property or the Deliverable has been handed over by the Supplier to the Authority or to the Authority Representative.
- 9.11 Unless otherwise agreed, and subject to the provisions of Clauses 9.23 – 9.31 (*Vesting*) where applicable, the property in the Goods shall pass from the Supplier to the Authority upon delivery in accordance with Clauses 9.8 - 9.15 (*Delivery*).
- 9.12 Until delivery, the risk of loss or damage to the Goods shall be with the Supplier.
- 9.13 Whereby any Deliverable is to be delivered by the Supplier to their own premises, or to those of a Sub-contractor (“Self-to-Self Delivery”), the risk in such a Deliverable shall remain vested in the Supplier until it is handed over to the Authority.
- 9.14 The Supplier shall ensure that the Goods are packaged in accordance with the terms of the Contract.

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- 9.15 The Authority may occasionally issue instructions that differ from the transport or consignment arrangements in the Contract. These instructions will be the subject of a Contract amendment which shall also account for any resulting change in the Charges, delivery or both.

Form Usage

- 9.16 The Supplier must use the electronic business delivery form for all deliveries of Goods and performance of Services.
- 9.17 The electronic business delivery form, DEFFORM 129J, must accompany the package or consignment to which it applies. The Supplier must either
- (a) attach the form as a label, directly to the package surface, or
 - (b) forward the form in a document envelope as provided in Clauses 9.18 and 9.19.

Form Structure

For the provision of Goods:

- 9.18 Where delivery is for physical Goods, the following criteria apply:
- (a) The nominal label size is A6 (102 mm x 152 mm) but A5 (148 mm x 210 mm) is acceptable. If required by package size, the Supplier may use other label sizes, but only if no degradation to the text, bar code legibility and quality occurs, see Clause 9.21.
 - (b) The Supplier must attach two labels to each package or consignment delivered. One label must be detachable for use in processing the information through the appropriate Authority receipting system.

For the provision of Services:

- 9.19 Where performance is for a Service, the following criteria apply:
- (a) Standard size is A4 (210 mm x 297 mm).
 - (b) The Supplier must provide one form either on completion of the Service or on completion of each agreed stage of the Service.

Bar Code Symbolology and Print Quality

- 9.20 The bar code symbolology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbolologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.
- 9.21 The barcode print quality shall be as defined in ISO/IEC 16388 (Information technology – Automatic identification and data capture techniques – Code 39 bar code symbolology specification). The Overall Grade shall be at least Grade B at point of printing and not less than Grade C at final point of receipt.

Methods of Printing

- 9.22 For method of printing the DEFFORM 129J, electronic business delivery form, see DefStan 81-041 (Part 6). Laser printing is preferred.

Vesting

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9.23 Subject to the following provisions of Clauses 9.23 - 9.31:

- (a) each of the Goods as it is constructed together with its component parts and equipment so far as incorporated in the Goods; and
- (b) all Materiel which the Supplier acquires or allocates for incorporation,

in any of the Goods, shall vest in and become the absolute property of the Authority, as from the time the construction of the Goods begins or the Materiel is acquired specifically for or is allocated for incorporation in any of the Goods and shall from that time be in the possession of the Supplier for the sole purpose of completing the Goods and delivering them when completed to the Authority, and shall not be within the control or disposition of the Supplier other than for that purpose.

9.24 Neither the Supplier, nor a Sub-contractor, nor any other person shall have a lien on any Goods or Materiel which have vested in the Authority under Clause 9.23 for any sum due to the Supplier, Sub-contractor or other person. The Supplier shall take all reasonable steps necessary to ensure that the provisions of Clauses 9.23 - 9.31 are brought to the notice of all Sub-contractors and other persons dealing with any such Goods or Materiel.

9.25 Without prejudice to Clause 9.23, the Supplier shall ensure that from the time when the construction of any of the Goods begins, or as soon as practicable thereafter, or when any Materiel is acquired specifically for or is allocated for incorporation in any of the Goods, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Supplier shall comply with any direction given by the Authority in this respect.

9.26 Any of the Goods or Materiel which are rejected by the Authority shall immediately re-vest in the Supplier.

9.27 If the Authority terminates the Contract any of the Goods which have not been accepted in accordance with the relevant provisions of Schedule 14 (*Testing Procedures*) and any Materiel which has not been incorporated in any of the Goods which have been accepted in accordance with the relevant provisions of Schedule 14 (*Testing Procedure*) shall re-vest in the Supplier. Such re-vesting shall occur on the expiry of thirty days from the date on which that termination shall take effect, unless the Authority has given the Supplier notice, prior to that expiry, that the Authority elects to retain the property in the Goods or Materiel.

9.28 Any payment made by the Authority in respect of any of the Goods or Materiel which re-vest in the Supplier under Clauses 9.26 or 9.27 shall be recoverable from the Supplier.

9.29 The Supplier shall hand over to the Authority any of the Goods or Materiel in which the Authority has elected to retain the property under this Clause 9.27. If the Supplier fails to do so, the Authority shall have the right to enter the Supplier's premises and remove the Goods or Materiel and recover the cost of doing so from the Supplier.

9.30 The Authority shall pay a fair and reasonable price for any of the Goods or Materiel in which it has elected to retain the property under Clause 9.27 and which are handed over to it by the Supplier or otherwise come into its possession.



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- 9.31 Where any of the Goods or Materiel in the Authority's possession or control has re-vested in the Supplier in accordance with Clauses 9.26 or 9.27, the Supplier shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the Contract. If the Goods or Materiel is on the Authority Premises, the Supplier shall remove them within fourteen days of their re-vesting.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 15 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports and Audits*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*) and, to the extent specified therein, Clause 28 (*Remedial Adviser*) and Clause 29 (*Step-In Rights*).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 10.4 The Charges are stated exclusive of VAT chargeable on the supply of Deliverables by the Supplier to the Authority, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.4A If the Supplier is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Supplier is liable to pay the tax due to HMRC, the Authority shall pay to the Supplier in addition to the Charges (or any other sum due to the Supplier) a sum equal to the output VAT chargeable on the tax value of the supply of Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- 10.4B The Supplier is responsible for the determination of VAT liability. The Supplier shall consult their Authority Representative or the HMRC Enquiries Desk in cases of doubt. The Supplier shall notify the Authority Representative of the Authority's VAT liability under the Contract, and any changes to it, within twenty Working Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Supplier to obtain, and pass to the Authority, a formal opinion from HMRC. The Supplier shall comply promptly with any such requirement. Where the Supplier obtains an opinion from HMRC, they shall supply a copy to the Authority within three Working Days of receiving that opinion unless they propose to challenge the opinion. Where the Supplier challenges the opinion they shall supply to the Authority a copy of any final opinions issued by HMRC on completion of the challenge within three Working Days of receiving the opinion.
- 10.4C Where supply of the Deliverables comes within the scope of UK VAT, but the Supplier is not required by UK VAT law to be registered for UK VAT (and has not

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registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Deliverables. The Supplier shall be responsible for ensuring they take into account any changes in VAT law regarding registration.

- 10.4D Where the Deliverables are deemed to be supplied to the Authority outside the UK, the Supplier may be required by the laws of the country where the supply takes place to register there for tax purposes. In that event, it is the Supplier's responsibility to ensure that the Charges capture this tax.
- 10.4E In relation to the Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Supplier's input VAT (or similar non-UK input taxes). However, these input taxes will be allowed where they were included in the Charges and it is established that, despite the Supplier having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Supplier has complied with this requirement the matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 10.4F Should HMRC assess that the Supplier has incorrectly determined the VAT liability, in accordance with Clauses 10.4 to 10.4I, the Authority will pay the VAT assessed by HMRC or the Supplier shall credit any VAT paid by the Authority over and above the HMRC assessment (as applicable). In the event that HMRC so determines, the Supplier shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Supplier shall supply the Authority with a copy of all correspondence between HMRC and the Supplier's advisors regarding the VAT assessment within three Working Days of a written request from the Authority for such correspondence.
- 10.4G Where the Supplier is a qualifying company or qualifying partnership for the purposes of any UK tax legislation the Supplier shall notify the Authority Representative, in writing, where it has notified HMRC that a return it has delivered to HMRC includes an uncertain amount that relates to a contract it has entered into with the Authority. The Supplier shall notify the Authority within 20 Working Days of the notification it has provided to HMRC and provide the Authority with a copy of the notification. The Supplier shall continue to keep the Authority informed of any correspondence and/or discussions with HMRC in relation to the uncertain tax treatment within a reasonable time frame or upon request by the Authority.
- 10.4H In the event that HMRC notifies the Supplier of any change to the tax treatment of a previously notified uncertain amount, the Supplier shall notify the Authority and provide a copy of HMRC's notification and assessment within 20 Working Days of receiving such notification and assessment.
- 10.4I The Authority shall not be liable for any interest and/or penalty that the Supplier is required to pay to HMRC for a failure to notify HMRC of an uncertain amount.
- 10.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 10.5 shall be paid in cleared funds by the Supplier to the Authority not less than five Working

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Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

- 10.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.
- 10.7 If the Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.6 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Financial Distress

- 10.8 The Parties shall comply with the provisions of Schedule 18 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Promoting Tax Compliance

- 10.9 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

SECTION D – CONTRACT GOVERNANCE

11 GOVERNANCE

- 11.1 The Parties shall comply with the provisions of Schedule 21 (*Governance*) in relation to the management and governance of this Contract.

Representatives

- 11.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 29 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 RECORDS, REPORTS & AUDITS

- 12.1 The Supplier shall comply with the provisions of Schedule 24 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records.
- 12.2 The Parties shall comply with the provisions of:
- (a) Parts A and B of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the financial transparency objectives and notification of changes to costs or Charges; and
 - (b) Part C of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.
- 12.3 The Supplier shall comply with the provisions of Schedule 33 (*Earned Value Management*).

13 CHANGE

Change Control Procedure

- 13.1 Any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

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13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges or this Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

14.1 The Supplier shall:

- (a) submit in writing to the Authority for approval, initially and as necessary from time to time, a list of the names of all Supplier Personnel who may need to enter the Authority Premises for the purpose of, or in connection with, work under the Contract, specifying the capacity in which they require admission and giving such other particulars as the Authority may require including full details of birthplace and parentage of any such Supplier Personnel who:
 - (i) was not born in the United Kingdom; or
 - (ii) if they were born in the United Kingdom, were born of parents either or both of whom were not born in the United Kingdom.
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (*Services Description*) and Schedule 5 (*Security Management*); and
 - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 5 (*Security Management*);
- (c) subject to Schedule 28 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

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- (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Contract.
- 14.2 (a) The Authority shall issue passes for those Supplier Personnel who are approved by it in accordance with Clause 14.1(a) for admission to Authority Premises and Supplier Personnel shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.
- (b) Notwithstanding the provisions of Clauses 14.1(a) if, in the opinion of the Authority, any Supplier Personnel shall misconduct themselves, or it shall not be in the public interest for any person to be employed or engaged by the Supplier, the Supplier shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.
- (c) The decision of the Authority upon any matter arising under Clauses 14.1(a), 14.2(a) and 14.2(b) shall be final and conclusive.

Observance of Regulations

14.2A The following provisions apply:

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

Liability in respect of damage to Government Property

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14.2B Without prejudice to the provisions of Clauses 14.2C -14.2P (*Issued Property*), the Supplier shall make good or, at the option of the Authority, pay compensation for all damage occurring to any Issued Property, which for these purposes includes land or buildings, occasioned by the Supplier, or by any of the Supplier Personnel, arising from the Supplier's or the Supplier Personnel's presence on the Authority Premises in connection with this Contract, provided that this Clause shall not apply to the extent that the Supplier is able to show that any such damage was not caused or contributed to by any circumstances within the Supplier's or the Supplier Personnel's reasonable control.

Issued Property

General

14.2C All Issued Property shall remain the property of the Authority. It shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.

14.2D Neither the Supplier, nor any Sub-contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Supplier, Sub-contractor or other person, and the Supplier shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-contractors and other persons dealing with any Issued Property.

Receipt

14.2E Subject to Clauses 14.2F and 14.2I below, within 14 days of receipt of Issued Property, or such other longer period as may be specified in the Contract, the Supplier shall:

- (a) check the Issued Property to verify that it corresponds with the Issued Property specified in the Contract;
- (b) conduct a reasonable visual inspection; and
- (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 notify the Authority of any defects, deficiencies or discrepancies discovered.

14.2F Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 14.2E above shall count from the date on which packages are opened.

14.2G The Authority shall within a reasonable time after receipt of any notice under Clause 14.2E replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority shall revise the Charges, Implementation Plan or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

14.2H In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 14.2E, fair and reasonable revisions of the

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Charges, Implementation Plan or both shall be made as may be appropriate provided that the Supplier has taken all reasonable measures to mitigate the consequences of any such delay.

14.2I Clauses 14.2E – 14.2H do not apply in the following circumstances:

- (a) where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in the Contract; or
- (b) where the Supplier can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract.

Custody

14.2J Subject to Clause 14.2M below and any limitation or exclusion of liability as may be specified in this Contract, the Supplier shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Goods, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions or until the expiry of the period specified in Clause 14.2P.

14.2K The Supplier shall be responsible for such calibration and maintenance of the Issued Property as is specified in the Contract.

14.2L If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Supplier of the value of the Issued Property.

14.2M The Supplier shall not be liable in respect of:

- (a) defects or deficiencies notified to the Authority in accordance with Clause 14.2E or latent defects which the Supplier can show could not reasonably have been discovered by means of the activities described at Clause 14.2E;
- (b) fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Supplier);
- (c) Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract;
- (d) any loss or damage to Issued Property arising from:
 - (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
 - (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
 - (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or

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- (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the King's enemies.

Accounting and Return of Issued Property

14.2O The Supplier shall:

- (a) open and maintain a Public Store Account ("**PSA**") in accordance with DEF STAN 05-099;
- (b) ensure that the PSA and all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time; and
- (c) on being given two months notice permit, and co-operate with, the Authority to conduct audits of the PSA and the property of the Authority recorded in the PSA in a manner to be determined by the Authority; where the Authority has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of issue then these audits may be conducted without notice.

14.2P At Contract expiry or termination the Supplier shall forward a list of Issued Property still held to the Authority Representative. Return or disposal of such Issued Property will be as instructed by the Authority at Contract expiry or termination. The Authority shall provide such instructions within two months of the Supplier's written request to do so.

Accounting for property of the Authority

14.2Q The Supplier shall:

- (a) ensure the PSA shall include a complete list of all property of the Authority, as defined in Clause 14.2R, and record for that property all transactions or other accounting information specified at Annex A to DEFCON 694;
- (b) supply to the Authority quarterly reports on the current PSA holdings. At least one report in any twelve-month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-099. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the Supplier and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Supplier under this Contract;
- (c) retain the PSA for a period of three years after disposal of the last item of the property of the Authority;
- (d) if the Authority agrees that a Sub-contractor at whatever level of subcontracting shall have responsibility in the Sub-contractor's PSA for property of the Authority issued in aid of this Contract, the Supplier shall include in any Sub-contract with those Sub-contractors only the provisions corresponding to those set out in Clauses 14.2Q – 14.2W that apply to property of the Authority

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issued in aid of the Sub-contract, in particular Clauses 14.2Q, 14.2R, 14.2T and 14.2W; and

- (e) manage the Government Furnished Assets component of the PSA in accordance with the provisions of DEFSTAN 05-099 as well as the GFA Management Plan attached as Annex 1 to Schedule 7 (*Authority Responsibilities*); and implement any new edition of or amendment to DEFSTAN 05-099 subject to Schedule 22 (*Change Control Procedure*) within three months of the publication date of the new edition. These amendments shall not have retrospective effect.

14.2R For the purposes of this Clause 'property of the Authority' means Government Furnished Assets, including property issued under Clauses 14.2C – 14.2P and property of the Authority issued to the Supplier under any other authorising document including pursuant to the GFA Management Plan except for property vested in the Authority under Clause 9.23.

14.2S For the avoidance of doubt, it is a condition of this Contract that Clauses 14.2Q – 14.2W shall apply to all property issued to the Supplier from the date of this Contract, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the date of this Contract may be subject to separate contractual arrangements.

14.2T The obligations of the Supplier arising under Clauses 14.2Q – 14.2W in respect of property of the Authority issued in aid of this Contract shall survive termination or expiry of this Contract and shall not be completed until all such obligations are fulfilled including the provisions of Sub-Clause 14.2Q(e).

14.2U The obligations of the Supplier arising, under Clauses 14.2Q – 14.2W, in respect of property of the Authority unconnected with this Contract, shall survive termination or expiry of this Contract and shall not be completed until all those obligations are fulfilled. Including the provisions of Sub-Clause 14.2Q(e) unless and until a subsequent contract containing DEFCON 694 is placed with the Supplier, at which time obligations, in respect of any remaining property of the Authority, unconnected with this Contract, shall be subsumed in the subsequent contract.

14.2V If, after termination or expiry of this Contract, no subsequent contract is placed containing DEFCON 694 within the period detailed at Sub-Clause 14.2Q(e), then the obligations of the Supplier arising under Clauses 14.2Q – 14.2W in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed at Sub-Clause 14.2Q(e).

14.2W The Authority reserves the right to amend Annex A to DEFCON 694 without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of Clauses 14.2Q – 14.2W, Annex A of DEFCON 694 shall be regarded as a specification and subject to the terms of Schedule 22 (*Change Control Procedure*). If the Authority exercises this right:

- (a) the Supplier shall implement the amendment to Annex A of DEFCON 694 at the commencement of the Authority's next accounting year provided that a notice of six months or such other period as may

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expressly be agreed between the Authority and Supplier is given to the Supplier. These amendments shall not have retrospective effect; and

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

Redundant Materiel

14.2X Redundant Materiel shall mean Materiel that is identified as surplus to the requirement of the Contract for whatever reason.

14.2Y All Redundant Materiel resulting from work carried out under, or procured for the purposes of the Contract, the costs of which have been paid by the Authority under the Contract, or which is otherwise owned by the Authority, shall be disposed of as follows:

- (a) On completion of the Contract or earlier if appropriate, the Supplier shall prepare:
 - (i) a list of those items of the Materiel referred to above which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and
 - (ii) a list of those items of the Materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.
- (b) The Supplier shall send the lists referred to in Clauses 14.2Y(a)(i) and 14.2Y(a)(ii) above to the Authorised Representative.
- (c) Within three months of the date of receipt of the lists, the Authority shall issue disposal instructions to the Supplier. Such disposal instructions shall require that the items of Materiel are either:
 - (i) transferred to other subsisting contracts; or
 - (ii) subject to contract, retained by the Supplier for use in the performance of future contracts placed with the Supplier; or
 - (iii) subject to contract, repaired by the Supplier; or
 - (iv) at the direction of the Authority, sold by the Supplier, acting on behalf of the Authority, for the best price reasonably obtainable. Materiel designated in accordance with Clause 14.2Y(a)(ii) above shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

14.2Z The proceeds of the sale of items of Materiel sold pursuant to Clause 14.2Y(c)(iv) above shall be credited to the Authority in accordance with arrangements made between the Supplier and the Authority.

14.2AA A list of the items sold by the Supplier shall be sent to the Authorised Representative together with a statement of the proceeds of sale.

Transport Overseas

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14.2BB Where the Supplier's Personnel are required by this Contract to join or visit Authority Premises overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by Authority chartered aircraft. The Supplier shall make such arrangements through the Authority Representative. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes their Supplier Personnel to accompany Materiel for installation which they are to arrange to be delivered, the Supplier shall make their own transport arrangements. The Authority shall reimburse the Supplier's costs for such transport of the Supplier Personnel on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier Personnel locally overseas which is necessary for the purposes of this Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

Medical Treatment Overseas

14.2CC Out-patient medical treatment given to the Supplier Personnel by a Service Medical Officer or other Government Medical Officer at Authority Premises overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Authority Premises, and transportation of the Supplier Personnel back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at the appropriate local rate.

Injuries, Disease and Dangerous Occurrences

14.2DD The Supplier shall report any injury, disease or dangerous occurrence at any Authority Premises 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 Authority Premises. This would be in addition to any report, which the Supplier may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

Dependants of Supplier Personnel

14.2EE No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier Personnel. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Authority rates.

Provision of Funds Overseas

14.2FF The Supplier shall, wherever possible, arrange for funds to be provided to the Supplier Personnel overseas through normal banking channels (e.g. by travellers cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Supplier and subject to any reasonable limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Authority Premises to which the Supplier Personnel are attached. All such advances made by the Authority shall be recovered from the Supplier.

Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 29 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;
 - (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least twenty (20) Working Days' notice;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

14.7 The Parties agree that:

- (a) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
- (b) the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

14.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

14.9 The Parties agree that Schedule 28 (*Staff Transfer*) shall apply in respect of any Service Transfer and Subsequent Service Transfer.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

15.1 The Supplier shall:

- (a) subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- (b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
- (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

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- (d) provide reports on the information at Clause 15.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
 - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 15.2 Each advert referred to in Clause 15.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

- 15.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
 - (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Contract in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.
- 15.6 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority in writing of:
 - (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.7 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:
 - (a) a copy of the proposed Sub-contract; and
 - (b) any further information reasonably requested by the Authority.
- 15.8 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information

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requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.23 (*Termination of sub-contracts*);

in which case, the Supplier shall not proceed with the proposed appointment.

15.9 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 15.6; and
 - (ii) any further information requested by the Authority pursuant to Clause 15.7; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.10 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 11 (*Third Party Contracts*).

Appointment of Key Sub-contractors

15.10 Where the Supplier wishes to enter into a 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 it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.23 (*Termination of sub-contracts*).

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15.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 10 (*Notified Key Sub-contractors*).

15.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:
 - (i) data protection requirements set out in Clauses 18 (*Authority Data and Security Requirements*) and 21 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 20 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5(m) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract; and
 - (v) the conduct of Audits set out in Part C of Schedule 19 (*Financial Reports and Audit Rights*);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 32.1(a) (*Termination by the Authority*) and 33.4 (*Payments by the Authority*) and Schedule 16 (*Payments on Termination*) of this Contract;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- (h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 28 (*Remedial Adviser*);

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- (i) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 29 (*Step-in Rights*);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 18 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 4.3(b)(ii) of Schedule 18 (*Financial Distress*).

15.13 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

15.14 The Supplier shall ensure that all Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into after the Effective Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.14(b), the invoice shall be regarded

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as valid and undisputed for the purpose of Clause 15.14(d) after a reasonable time has passed;

- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) [Not used]
- (g) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

15.15 The Supplier shall take reasonable endeavours to ensure that all Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into before the Effective Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.15(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.15(d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.15 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

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15.16 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause 15.16(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.17 Without prejudice to Clause 15.16(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause 15.17(a), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

15.18 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall upload to the Virtual Library within 15 Working Days of submission of the latest Balanced Scorecard Report an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include, but not be limited to, the following:

- (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
- (b) actions to address each of the causes set out in Clause 15.18(a); and
- (c) mechanism for and commitment to regular reporting on progress to the Supplier’s Board.

15.19 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier’s website within 10 Working Days of the date on which the Action Plan is uploaded to the Virtual Library.

15.20 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.

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- 15.21 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 15.22 Notwithstanding any provision of Clauses 19 (*Confidentiality*) and 23 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

15.23 The Authority may require the Supplier to terminate:

- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 32.1(b) (*Termination by the Authority*);
 - (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 in accordance with Clause 15.25; and
- (b) a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

Retention of Legal Obligations

15.24 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

15.25 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 23 of the Defence and Security Public Contracts Regulations 2011, then:

- (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
- (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

15.26 In addition to any other Management Information requirements set out in this Contract, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to the Authority thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 24 (*Reports and Records Provisions*) Annex 4 and in accordance with any guidance issued by the Authority from time to time.

15.27 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

- 16.1 The Parties agree that the terms set out in Schedule 32 (*Intellectual Property Rights*) shall apply to this Contract.

Escrow

- 16.2 The Parties shall enter into an Escrow Agreement in accordance with Schedule 34 (*Escrow Terms*) and shall comply with their respective obligations under Schedule 34 (*Escrow Terms*).

17 IPRs INDEMNITIES

- 17.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 17.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 17.3 If the Supplier elects to procure a licence in accordance with Clause 17.2(a) or to modify or replace an item pursuant to Clause 17.2(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Authority may terminate this Contract (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in Clause 17.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

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17.4 The indemnity at Clause 17.1 shall not apply in respect of any IPRs Claim that arises from:

- 17.4.1 the use of Relevant IPRs by the Indemnified Person otherwise than in accordance with the terms of this Contract and any applicable licence or sub-licence conditions provided that these are in accordance with this Contract and have been notified to the Authority prior to or on the grant of the applicable licences or sub-licence; or
- 17.4.2 any modification, updating or development carried out by or for the Authority to any item supplied by the Supplier under this Contract, where such modification, updating or development is not authorised or approved by or on behalf of the Supplier.

18 **AUTHORITY DATA AND SECURITY REQUIREMENTS**

- 18.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 18.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 18.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (*Services Description*).
- 18.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 18.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 18.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 18.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
 - (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified

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in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*).

- 18.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 18.9 The Supplier shall comply with the requirements of Schedule 5 (*Security Management*).
- 18.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 18.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 18.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 18.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

Security Measures

- 18A.1 Unless they have the written authorisation of the Authority to do otherwise, neither the Supplier nor any of their Supplier Personnel shall, either before or after the expiry or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person in any of the following categories:
- (a) who is not a British citizen;
 - (b) who does not hold the appropriate authority for access to the protected matter;
 - (c) in respect of whom the Authority has notified the Supplier in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - (d) who is not a member of the Supplier Personnel; or
 - (e) who is a member of the Supplier Personnel and has no need to know the information for the proper performance of this Contract.
- 18A.2 Unless they have the written authorisation of the Authority to do otherwise, the Supplier and the Supplier Personnel shall, both before and after the expiry or termination of this Contract, take all reasonable steps to ensure that:
- (a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and

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- (b) any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and upon request, is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Supplier has taken or is taking reasonable steps as required by this Clause 18A, shall be final and conclusive.

18A.3 The Supplier shall:

- (a) provide to the Authority:
 - (i) upon request, such records giving particulars of those Supplier Personnel who have had at any time, access to any Secret Matter that is required to be kept in accordance with Clause 18A.2(b);
 - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Supplier and their Supplier Personnel are complying with their obligations 18A.1 – 18A.6, including the measures taken or proposed by the Supplier so as to comply with their obligations and to prevent any breach of them; and
 - (iii) full particulars of any failure by the Supplier and Supplier Personnel to comply with any obligations relating to Secret Matter arising under 18A.1 – 18A.6 immediately upon such failure becoming apparent; and
- (b) ensure that, for the purpose of checking the Supplier's compliance with the obligation in Clause 18A.2(b), a representative of the Authority shall be entitled, at any time, to enter and inspect any premises used by the Supplier, which are in any way connected with this Contract, and inspect any document or thing in any such premises which is being used, or made for the purposes of this Contract. Such representative shall be entitled to all such information as it may reasonably require.

18A.4 If at any time either before or after the completion or termination of this Contract, the Supplier or any of the Supplier Personnel discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Supplier shall forthwith inform the Authority of the matter with full particulars thereof.

Subcontracts

18A.5 If the Supplier proposes to make a Sub-contract which will involve the disclosure of Secret Matter to the Sub-contractor, the Supplier shall:

- (a) submit for approval of the Authority the name of the proposed Sub-contractor, a statement of the work to be carried out and any other details known to the Supplier which the Authority shall reasonably require;

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- (b) incorporate into the Sub-contract the terms of the Appendix to DEFCON 659A and such secrecy and security obligations as the Authority shall direct. In the Appendix to Defcon 659A "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Supplier" and "Second Party" shall mean the "Sub-contractor"; and
- (c) inform the Authority immediately if they become aware of any breach by the Sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-contract.

Termination

18A.6 The Authority shall be entitled to terminate this Contract immediately if:

- (a) the Supplier is in breach of any obligation under Clauses 18A.1 – 18A.6; or
- (b) the Supplier is in breach of any secrecy or security obligation imposed by any other contract with the Crown; and/or
- (c) where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter,

and claim such damages as may have been sustained as a result of the Supplier's breach of Clauses 18A.1 – 18A.6.

Reportable Official and Official-Sensitive Security Requirements

- 18B.1 In Clauses 18B.1 – 18B.3 “**Information**” means information recorded in any form disclosed or created in connection with this Contract.
- 18B.2 The Supplier shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the security aspects letter annexed to this Contract, in accordance with the official security conditions contained in this Contract or annexed to the security aspects letter.
- 18B.3 The Supplier shall include the requirements and obligations set out in Clause 18B.2 in any Sub-contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-contractor. The Supplier shall also include in the Sub-contract a requirement for the Sub-contractor to flow the requirements of Clauses 18B.1 – 18B.3 to its Sub-contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

19 CONFIDENTIALITY

- 19.1 For the purposes of this Clause 19, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- (a) treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner’s prior written consent;
 - (c) not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Contract;
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information; and
 - (e) not copy any of that Confidential Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- 19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

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- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this Contract; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 19.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 19.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract, provided that the Supplier shall take all reasonable necessary precautions to ensure that any such Confidential Information disclosed is treated in confidence by the relevant Supplier Personnel and is not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any Sub-contract under it;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 19.5, it shall remain responsible at all times for compliance with

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the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

19.5A The Supplier shall ensure that the Supplier Personnel are aware of their arrangements for discharging the obligations at Clauses 19.2 and 19.5 before they receive Confidential Information and take such steps as may be reasonably practical to enforce such arrangements.

19.5B A Party shall not be in breach of Clauses 19.2, 19.5, 19.6, 19.8 and 19.9 to the extent that either Party:

- (a) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
- (b) has the right to use or disclose the Confidential Information in accordance with other conditions of the Contract; or
- (c) can show:
 - (i) that the Confidential Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties;
 - (ii) that the Confidential Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract;
 - (iii) that the Confidential Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - (iv) from its records that the same information was derived independently of that received under or in connection with the Contract;

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

19.6 The Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 19.6(a) for any purpose relating to or connected with this Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 29 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 28 (*Remedial Adviser*) and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 19.

19.7 Nothing in this Clause 19 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

19.8 Where the Authority intends to disclose Confidential Information to a commercial entity which is not a Central Government Body in accordance with Clauses 19.6(c) or 19.6(d) above, the Authority will endeavour to provide the Supplier with 3 Working Days' notice in advance of such disclosure. In relation to a disclosure of Confidential Information made under Clause 19.6(c) above, if reasonably requested by the Supplier within 2 Working Days of such notice being given, where the Authority has not already done so, it will endeavour to

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procure from the intended recipient of the Confidential Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Clause 19.

19.9 Before sharing any Confidential Information in accordance with Clause 19.6 above, the Authority may redact the Confidential Information. Any decision to redact information made by the Authority shall be final.

19.10 Nothing in this Clause 19 shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

20 TRANSPARENCY AND FREEDOM OF INFORMATION

20.1 The Parties acknowledge that:

- (a) the Transparency Reports;
- (b) the content of this Contract, including any changes to this Contract agreed from time to time, except for –
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - (ii) Commercially Sensitive Information; and
- (c) the Publishable Performance Information

(together the “**Transparency Information**”) are not Confidential Information.

20.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

20.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 24 (*Reports and Records Provisions*).

20.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

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- 20.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 20.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 19.6(c))) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 20.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 20.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

21 PROTECTION OF PERSONAL DATA

Status of the Controller

21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

- (a) “Controller” (where the other Party acts as the “Processor”);
- (b) “Processor” (where the other Party acts as the “Controller”);
- (c) “Joint Controller” (where both Parties are considered to jointly control the same Personal Data); or
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control),

and the Parties shall set out in Schedule 31 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Contract.

Where one Party is Controller and the other Party its Processor

21.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 31 (*Processing Personal Data*) by the Controller.

21.3 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

21.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

21.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Schedule 31 (*Processing Personal Data*), unless the Processor is required to

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do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18 (*Authority Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 31 (*Processing Personal Data*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause 21, Clauses 19 (*Confidentiality*) and 18 (*Authority Data and Security Requirements*);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or

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- (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office and as set out in Annex 2 to Schedule 31 (*Processing Personal Data*), as well as any additional measures determined by the Controller;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data.
- (e) where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the EU GDPR; or
 - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the Controller which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU set out in Annex 3 to Schedule 31 (*Processing Personal Data*) or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the Controller;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the Processor complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound,

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uses its best endeavours to assist the Controller in meeting its obligations); and

(v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and

(f) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

21.6 Subject to Clause 21.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

21.7 The Processor's obligation to notify under Clause 21.6 shall include the provision of further information to the Controller in phases, as details become available.

21.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 21.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

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- (d) assistance as requested by the Controller following any Data Loss Event; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 21.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 21.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 21.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
 - (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 21 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 21.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 21.14 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause 21 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

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21.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

21.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Annex 1 to Schedule 31 (*Processing Personal Data*).

Where the Parties are Independent Controllers of Personal Data

21.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

21.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

21.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 21.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

21.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Contract.

21.21 The Parties shall only provide Personal Data to each other:

- (a) to the extent necessary to perform the respective obligations under this Contract;
- (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
- (c) where the Personal Data is subject to UK GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46

of the UK GDPR or DPA 2018 Section 75) as determined by the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office and as set out in Annex 2 to Schedule 31 (*Processing Personal Data*), as well as any additional measures determined by the non-transferring Party;

- (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data;
- (d) where the Personal Data is subject to EU GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the EU, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
- (i) the transfer is in accordance with Article 45 of the EU GDPR; or
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU set out in Annex 3 to Schedule 31 (*Processing Personal Data*) or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and

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- (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
 - (e) where it has recorded it in Schedule 31 (*Processing Personal Data*).
- 21.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 21.23 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.
- 21.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract (**“the Request Recipient”**):
 - (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 21.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:

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- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
- (b) implement any measures necessary to restore the security of any compromised Personal Data;
- (c) work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

21.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 31 (*Processing Personal Data*).

21.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 31 (*Processing Personal Data*).

21.28 Notwithstanding the general application of Clauses 21.2 to 21.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 21.16 to 21.27.

Standard Contractual Clauses

21.29 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the "**UK Adequacy Decision**"). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Contract is not covered by the UK Adequacy Decision or at any time during the term of the Contract the UK Adequacy Decision is:

- (a) withdrawn, invalidated, overruled or otherwise ceases to have effect, or
- (b) amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Contract,

Clauses 21.30 to 21.31 below shall apply.

21.30 The Parties agree:

- (a) that without any further action being required they have entered into the Standard Contractual Clauses set out in Part B of Annex 2 and Annex 3 to Schedule 31 (*Processing Personal Data*) in

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respect of data transfers by the Supplier outside of the EU to the UK;

- (b) that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
- (c) to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
- (d) that if there is any conflict between this Contract and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

21.31 In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:

- (a) that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in Part B of Annex 2 and Annex 3 to Schedule 31 (*Processing Personal Data*) and that such incorporation is not a Change;
- (b) that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
- (c) to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- (d) that if there is any conflict between this Contract and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

22 CYBER

Definitions

22.1 In this Clause 22(*Cyber*) the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Associated Company” means:

- (a) any associated company of the Supplier from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- (b) any parent undertaking or subsidiary undertaking of the Supplier from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

“Cyber Risk Profile” means the level of cyber risk relating to this Contract assessed by the Authority or in relation to any Sub-contract assessed by the Supplier, in each case in accordance with the Cyber Security Model. The Cyber Risk Level for this Contract is HIGH as defined in defence standard (DEFSTAN) 05-138 (Cyber Security for Defence Contractors). The Risk Assessment Reference (RAR) is RAR-446149474;

“Cyber Implementation Plan” means the plan referred to in Clause 22.3 (*Supplier Obligations*);

“Cyber Security Incident” means an event, act or omission which gives rise or may give rise to:

- (a) unauthorised access to an information system or electronic communications network on which MOD Identifiable Information resides;
- (b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network on which MOD Identifiable Information resides;
- (c) unauthorised destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- (d) unauthorised or unintentional removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- (e) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so;

“Cyber Security Instructions” means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Supplier;

“Cyber Security Model” and **“CSM”** mean the process by which the Authority ensures that MOD Identifiable Information is adequately protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEFSTAN

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05-138 and the CSM Supplier Assurance Questionnaire conducted via the Supplier Cyber Protection Service;

“CSM Risk Assessment Process” means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Profile for this Contract and any relevant Sub-contract;

“CSM Supplier Assurance Questionnaire” means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Supplier to demonstrate compliance with this Clause 22 (*Cyber*);

“Data” means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media;

“DEFSTAN 05-138” means the Defence Standard 05-138 as amended or replaced from time to time;

“Electronic Information” means all information generated, processed, transferred or otherwise dealt with under or in connection with this Contract, including but not limited to Data, recorded or preserved in electronic form and held on any information system or electronic communications network;

“ISN” means Industry Security Notices issued by the Authority to the Supplier whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;

“JSyCC WARP” means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

“NSA/DSA” means, as appropriate, the National or Designated Security Authority of the Supplier that is responsible for the oversight of the security requirements to be applied by the Supplier and for ensuring compliance with applicable national security regulations;

“Relevant Sub-contractor” means a Sub-contractor or any Associated Company of the Supplier who provides Deliverables in connection with this Contract but only to the extent that the Sub-contractor processes, stores or transmits MOD Identifiable Information under their Sub-contract;

“Supplier Cyber Protection Service” means the tool incorporating the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

Authority Obligations

22.2 The Authority shall notify the Supplier as soon as reasonably practicable where the Authority reassesses the Cyber Risk Profile relating to this Contract, which shall be in accordance with Clause 22.18 (*General*).

Supplier Obligations

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22.3 The Supplier shall, and shall procure that its Relevant Sub-contractors shall:

- (a) comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan attached to this Contract and for the avoidance of doubt any Cyber Implementation Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Authority and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect its own proprietary information;
- (b) complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Profile is notified to any affected Relevant Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Supplier's supply chain or on receipt of any reasonable request by the Authority;
- (c) re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- (d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause 22 (*Cyber*) in accordance with Good Industry Practice provided always that where there is a conflict between the Supplier's obligations under Clause 22.3(a) and this Clause 22.3(d)(*Supplier Obligations*) the Supplier shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- (e) comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- (f) notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time and the Supplier's NSA/DSA, and in the case of a Relevant Sub-contractor also notify the Supplier, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, and providing further information in phases, as full details become available;

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- (g) in coordination with their NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Authority and the Supplier's NSA/DSA in the circumstances and taking into account the Cyber Risk Profile;
- (h) consent to the Authority recording and using information obtained via the Supplier Cyber Protection Service in relation to this Contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Implementation Plan. For the avoidance of doubt such information shall include the cyber security accreditation of the Supplier and/or Relevant Sub-contractor as appropriate; and
- (i) include provisions equivalent to those set out in the Annex to DEFCON 658 (*Cyber Provisions to be included in relevant Sub-contracts*) (Edition 10/22) (the “**equivalent provisions**”) in all relevant Sub-contracts.

Management of Relevant Sub-Contractors

- 22.4 Provided that it is reasonable in all the circumstances to do so, the Authority agrees that the Supplier shall be entitled to rely on the self- certification by the Relevant Sub-contractor of its compliance with this Clause 22 (*Cyber*) in accordance with Clause 22.3(a) (*Supplier Obligations*).
- 22.5 Where a Relevant Sub-contractor notifies the Supplier that it cannot comply with the requirements of DEFCON 05-138, the Supplier shall require a Relevant Sub-contractor to prepare and implement a Cyber Implementation Plan in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Supplier and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary information of the Relevant Sub-contractor. Where the Supplier has reasonably relied on the Relevant Sub-contractor's self-certification and the Relevant Sub-contractor is subsequently found to be in breach of its obligations, the Supplier shall not be in breach of this Clause 22 (*Cyber*).
- 22.6 The Supplier shall, and shall require its Relevant Sub-contractors to, include provisions equivalent to those set out in the Annex to DEFCON 658 (*Cyber Provisions to be included in relevant Sub-contracts*) (Edition 10/22) in all relevant Sub-contracts and shall notify the Authority in the event that it becomes aware of any material breach of the provisions set out in the Annex to DEFCON 658 (*Cyber Provisions to be included in relevant Sub-contracts*) (Edition 10/22) by its Relevant Sub-contractor.

Records

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22.7 The Supplier shall keep and maintain, and shall ensure that any Relevant Sub-contractor shall keep and maintain, until six (6) years after the end of the Term or final payment under this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

- (a) copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause 22 (*Cyber*), including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Supplier and/or Relevant Sub-contractor; and
- (b) copies of all documents demonstrating compliance with Clause 22.3(e) and in relation to any notifications made under Clause 22.3(f) and/or investigation under Clause 22.3(g) (*Supplier Obligations*).

22.8 The Supplier shall, and shall ensure that any Relevant Sub-contractor shall, on request provide the Authority, the Authority Representatives and/or the Supplier's NSA/DSA such access to those records under Clause 22.7 (*Records*) as may be required in connection with this Contract.

Cyber Audit

22.9 In the event of a Cyber Security Incident the Supplier agrees that the Authority and its representatives, in coordination with the Supplier's NSA/DSA, may conduct such audits as are required to establish:

- (a) the cause of the Cyber Security Incident;
- (b) the impact of the Cyber Security Incident;
- (c) the MOD Identifiable Information affected, and
- (d) the work carried out by the Supplier to resolve the Cyber Security Incident and to mitigate the effects,

to ensure that the Cyber Security Incident is resolved to the satisfaction of the Authority and the NSA/DSA.

22.10 In addition to the rights in Clause 22.9(a), the Authority or its representatives and/or the Supplier's NSA/DSA, either solely or in any combination, may at any time during the Contract and for a period of six (6) years after expiry or termination of this Contract or final payment under this Contract whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes where the Supplier continues to hold MOD Identifiable Information:

- (a) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;

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- (b) to review the Supplier's and/or any Relevant Sub-contractor's compliance with their obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and
 - (c) to review any records created during the provision of the Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Deliverables for the purposes of Clause 22.7(a) and 22.7(b) (*Records*).
- 22.11 The Authority, acting reasonably and having regard to the confidentiality and security obligations owed by the Supplier to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Supplier but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the Authority any unsupervised access to any of the Supplier's information systems or electronic communications networks. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier and/or Relevant Sub-contractor or delay the provision of the Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.
- 22.12 The Supplier shall, and shall ensure that any Relevant Sub-contractor shall, on demand provide the Authority and any relevant regulatory body, including the Supplier's NSA/DSA, (and/or their agents or representatives), together the "**Cyber Auditors**", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
 - (a) all information requested by the Authority within the permitted scope of the audit;
 - (b) reasonable access to any Sites controlled by the Supplier or any Associated Company used in the performance of this Contract to the extent required within the permitted scope of the audit and, where such Sites are out with the control of the Supplier, shall secure sufficient rights of access for the Cyber Auditors as shall be necessary to allow audits to take place; and
 - (c) access to any relevant staff.
- 22.13 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days' notice of its intention to conduct an audit pursuant to this Clause 22 (*Cyber*).
- 22.14 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 22 (*Cyber*), unless the audit identifies a material breach of the terms of this Clause 22 (*Cyber*) by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred (which shall be evidence to the Supplier) in the course of the audit.

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- 22.15 The Supplier shall in their Sub-contracts with Relevant Sub-contractors procure rights for the Authority to enforce the terms of this Clause 22 (*Audit*) in accordance with the Contracts (Rights of Third Parties) Act 1999.

General

- 22.16 On termination or expiry of this Contract the provisions of this Clause 22 (*Cyber*) excepting Clause 22.3(g) and Clause 22.3(c) (*Supplier Obligations*) shall continue in force so long as the Supplier and/or any Relevant Sub-contractor holds any MOD Identifiable Information relating to this Contract.
- 22.17 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 22 (*Cyber*) that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination or expiry.
- 22.18 The Supplier agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber Security Instructions. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then either Party may seek an adjustment to the Charges for any associated increase or decrease in costs and the Supplier may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Profile or both provided always that the Supplier shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to this Contract and reasonable in all the circumstances.
- 22.19 Subject to Clause 22.18, where the Supplier seeks such adjustment or extension, the provisions of Schedule 22 (*Change Control Procedure*) shall apply to determine the request for adjustment or extension. The Supplier shall deliver an Impact Assessment to the Authority within eight (8) weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Profile or both (or such longer period as may be agreed by the Parties), identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Change Request which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Profile or both whether or not the Impact Assessment is rejected. If the Supplier does not agree with the Authority's determination, then the provisions of Schedule 23 (*Dispute Resolution Procedure*) shall apply.
- 22.20 The Supplier shall not recover any costs and/or other Losses under or in connection with this Clause 22 (*Cyber*) where such costs and/or other Losses are recoverable or have been recovered by the Supplier elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Supplier is able to or has



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recovered such sums in any other provision of this Contract or has recovered such costs and/or Losses in other contracts between the Supplier and the Authority or with other bodies.

23 PUBLICITY AND BRANDING

23.1 The Supplier shall not:

- (a) make any press announcements or publicise this Contract or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

23.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G – LIABILITY, INDEMNITIES AND INSURANCE

24 LIMITATIONS ON LIABILITY

Unlimited liabilities

24.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by law.

24.2 The financial caps on liability set out in Clauses 24.3 and 24.4 below shall not apply to the following:

- (a) for the following indemnities given by the Supplier to the Authority under this Contract:
 - (i) the Supplier's indemnity in Clause 17 (*IPRs Indemnities*); and
 - (ii) the Supplier's indemnity in relation to TUPE at Schedule 28 (*Staff Transfer*); and
- (b) for the indemnity given by the Authority to the Supplier in relation to TUPE under Schedule 28 (*Staff Transfer*).

For the avoidance of doubt any payments due from either of the Parties to the other in accordance with 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 24.3 and/or 24.4 below.

Financial limits

24.3 Subject to Clauses 24.1 and 24.2 and to the maximum extent permitted by Law:

- (a) throughout the Term the Supplier's total liability in respect of losses that are caused by Defaults of the Supplier shall in no event exceed:
 - (i) in respect of Clause 14.2B [REDACTED] in aggregate;
 - (ii) in respect of Clauses 32.1A and 32.1B [REDACTED] in aggregate;

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- (iii) in respect of Clauses 14.2C – 14.2 [REDACTED]
[REDACTED] in aggregate;
 - (iv) in respect of Clauses 9.7 and 9.14 [REDACTED]
[REDACTED] in aggregate; and
 - (v) in respect of Clause 21 and Data Protection Legislation,
[REDACTED] in aggregate.
- (b) without limiting Clause 24.1(a) and subject always to Clauses 24.1 and 24.2 and 24.1(c), the Supplier's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with Clause 7 (*Service Levels*), whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be [REDACTED]
[REDACTED] in aggregate; and
- (c) on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Supplier's total liability (in aggregate) set out in Clauses 24.1(a) and 24.1(b) above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 24.1(a) and 24.1(b) of this Contract.
- 24.4 Subject to Clauses 24.1 and 24.2 and 24.5, 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.
- 24.5 Clause 24.4 shall not exclude or limit the Supplier's right under this Contract to claim for the Charges.

Consequential loss

- 24.6 Subject to Clauses 24.1, 24.2 and 24.7, 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 turnover (whether direct or indirect);

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- (f) loss of business opportunities (whether direct or indirect);
- (g) loss of anticipated savings (whether direct or indirect); or
- (h) damage to goodwill (whether direct or indirect), even if that Party was aware of the possibility of such loss or damage to the other Party.

24.7 The provisions of Clause 24.6 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and administrative costs and expenses arising from the Supplier's Default, including any costs paid or payable by the Authority:
 - (i) for putting in place workarounds for the Deliverables and other deliverables that are reliant on the Deliverables; and
 - (ii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any or all wasted expenditure and losses incurred by the Authority arising from the Supplier's Default, including wasted management time;
- (c) the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the 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 Deliverables);
- (d) damage to the Authority's physical property and tangible assets, including damage under Clause 14.2B and Clauses 14.2C – 14.2P;
- (e) 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; or
- (f) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

Invalidity

24.8 If any limitation or provision contained or expressly referred to in this Clause 24 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that

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limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 24.

Third party claims or losses

24.9 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under Clause 17 (*IPRs Indemnities*) or at Law), the Authority shall be entitled to make a claim under this Contract against the Supplier in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

- (a) arises naturally and ordinarily as a result of the Supplier's failure to provide the Deliverables or failure to perform any of its obligations under this Contract; and
- (b) is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Supplier), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

24.10 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, and in particular the Authority shall not be entitled to recover the same loss (or a loss arising from the same event or series of connected events) under this Contract and also under the Core Licence Agreement. The financial limits set out in Clause 24.3 above shall be deemed to be aggregate financial limits applying to all claims under this Contract and the Core Licence Agreement.

Conduct of claims

24.11 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 27 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

25 INSURANCE

25.1 The Supplier shall comply with the provisions of Schedule 6 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

SECTION H – REMEDIES AND RELIEF

26 RECTIFICATION PLAN PROCESS

26.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay; and/or
- (b) in any Service Period there has been a Service Level Default in respect of a Critical Service Level; and/or
- (c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

26.2 If:

- (a) the Supplier notifies the Authority pursuant to Clause 26.1 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

26.3 The “**Rectification Plan Process**” shall be as set out in Clauses 26.4 (*Submission of the draft Rectification Plan*) to 26.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

26.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 26.2 (*Notification*). The Supplier shall submit a

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draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

26.5 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Notifiable Default; and
- (c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

26.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 23 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

26.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or
- (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

26.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

26.9 If the Authority consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Authority may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default;

save in the event of a Rectification Plan Failure or other Supplier Termination Event.

27 DELAY PAYMENTS

27.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 15 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

27.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

- (a) the Authority is entitled to or does terminate this Contract pursuant to Clause 32.1(b) (*Termination by the Authority*); or
- (b) the Delay exceeds the Delay Deduction Period.

28 REMEDIAL ADVISER

28.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 28.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 28.1 prior to or instead of exercising its right to terminate this Contract.

28.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:
 - (i) a person selected by the Supplier and approved by the Authority; or
 - (ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on

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which the Intervention Notice is given, a person identified by the Authority;

- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
- (c) any right of the Authority to terminate this Contract pursuant to Clause 32.1(b) (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the **"Intervention Period"**).

28.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Contract), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- (c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- (d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

28.4 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;

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- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

28.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 28.

28.6 If:

- (a) the Supplier:
 - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
 - (ii) is in Default of any of its obligations under Clause 28.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Authority shall be entitled to terminate this Contract pursuant to Clause 32.1(b) (*Termination by the Authority*).

29 **STEP-IN RIGHTS**

29.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause 29 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 19 (*Confidentiality*)). The Step-In Notice shall set out the following:

- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
- (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier’s Default;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;

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- (e) whether the Authority will require access to the Supplier's premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

29.2 Following service of a Step-In Notice, the Authority shall:

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
- (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 29.

29.3 For so long as and to the extent that the Required Action is continuing, then:

- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
- (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 29.4 shall apply to Deductions from Charges in respect of other Services; and
- (c) the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.

29.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

- (a) the degradation of any Services not subject to the Required Action;
or
- (b) the non-Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

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- 29.5 Before ceasing to exercise its step in rights under this Clause 29 the Authority shall deliver a written notice to the Supplier (a “**Step-Out Notice**”), specifying:
- (a) the Required Action it has actually taken; and
 - (b) the date on which the Authority plans to end the Required Action (the “**Step-Out Date**”) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 29.6.
- 29.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a “**Step-Out Plan**”) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.
- 29.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 29.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 29, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - (b) limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

30 **AUTHORITY CAUSE**

- 30.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:
- (a) Achieve a Milestone by its Milestone Date;
 - (b) provide the Operational Services in accordance with the Target Performance Levels; and/or
 - (c) comply with its obligations under this Contract,
- (each a “**Supplier Non-Performance**”),
- and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 30):

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- (i) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (A) to terminate this Contract pursuant to Clause 32.1(b) (*Termination by the Authority*); or
 - (B) to take action pursuant to Clauses 28 (*Remedial Adviser*) or 29 (*Step-In*);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
 - (B) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
 - (C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and
 - (D) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 15 (*Charges and Invoicing*); and/or
- (iv) where the Supplier Non-Performance constitutes a Service Level Default:
 - (A) the Supplier shall not be liable to accrue Service Credits;
 - (B) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable CSL Failure pursuant to Clause 7.4(a) (*Unacceptable CSL Failure*); and
 - (C) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

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in each case, to the extent that the Supplier can demonstrate that the Service Level Default was caused by the Authority Cause.

30.2 In order to claim any of the rights and/or relief referred to in Clause 30.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:

- (a) the Supplier Non-Performance;
- (b) the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract;
- (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- (d) the relief and/or compensation claimed by the Supplier.

30.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

30.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

30.5 Without prejudice to Clause 5.9 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

- (a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
- (b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

30.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 30 shall be implemented in accordance with the Change Control Procedure.

31 **FORCE MAJEURE**

31.1 Subject to the remaining provisions of this Clause 31 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 26 (*Service*

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Continuity Plan and Corporate Resolution Planning)), a Party may claim relief under this Clause 31 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier 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 Supplier.

- 31.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 31.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 31 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated, but the Supplier 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; or
 - (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 31.4 Subject to Clause 31.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 31.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 31.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such

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failure other than pursuant to Clause 32.1(c) (*Termination by the Authority*) or Clause 32.3 (*Termination by the Supplier*); and

- (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with this Contract:
 - (i) the Authority shall not be entitled:
 - (ii) during the continuance of the Force Majeure Event to exercise its rights under Clause 28 (*Remedial Adviser*) and/or Clause 29 (*Step-in Rights*) as a result of such failure;
 - (iii) to receive Delay Payments pursuant to Clause 27 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (iv) to receive Service Credits, or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable CSL Failure*) to the extent that a Service Level Default has been caused by the Force Majeure Event; and
 - (v) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- 31.7 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.
- 31.8 Relief from liability for the Affected Party under this Clause 31 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 31.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

32 TERMINATION RIGHTS

Termination by the Authority

32.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time, subject to the Authority giving [REDACTED] notice in writing to the Supplier;
- (b) if a Supplier Termination Event occurs; or
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) if the Contract has been substantially amended to the extent that the Defence and Security Public Contracts Regulations 2011 require a new procurement procedure,

and this Contract shall terminate on the date specified in the Termination Notice.

32.1A In addition to any other rights and remedies, the Authority shall have the right to terminate this Contract (in whole or in part) with immediate effect by giving written notice to the Supplier where the Supplier is in material breach of its obligations under this Contract.

32.1B Where the Authority has terminated the Contract under Clause 32.1A the Authority shall have the right to claim such damages as may have been sustained as a result of the Supplier's material breach of this Contract, including but not limited to any costs and expenses incurred by the Authority in:

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

32.2 Where the Authority:

- (a) is terminating this Contract under Clause 32.1(b) due to the occurrence of either limb (b),(h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default;
- (b) is terminating this Contract under Clause 32.1(b) due to the occurrence of limb (l) of the definition of Supplier Termination Event, the Authority shall act reasonably in exercising such right

of termination including, but not limited to, taking into account the Supplier's own assessment of the change of Control; and/or

- (c) has the right to terminate this Contract under Clause 32.1(b) or Clause 32.1(c), it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

32.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

- (a) this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds £2.2 million (provided that this £2.2 million threshold shall be reduced following the Operational Services Commencement Date to a sum representing the average monthly Charges for the Operational Services) and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 32.3(b) would result in a Partial Termination, the provisions of Clause 32.4 (*Partial Termination*) shall apply.

Partial Termination

32.4 If the Supplier notifies the Authority pursuant to Clause 32.3(b) (*Termination by the Supplier*) that it intends to terminate this Contract in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 32.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

32.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:

- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- (b) any adjustment to the Charges (if any) must be reasonable; and
- (c) the Supplier shall not be entitled to reject the Change.

33 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 33.1 The provisions of Clauses 5.8 (*Specially Written Software warranty*), 10.4 and 10.5 (VAT), 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Reports and Audits*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17.1 (*IPRs Indemnities*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*), 24 (*Limitations on Liability*), 33 (*Consequences of Expiry or Termination*), 39 (*Severance*), 41 (*Entire Agreement*), 42 (*Third Party Rights*), 44 (*Disputes*) and 45 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 15 (*Charges and Invoicing*), 16 (*Payments on Termination*), 19 (*Financial Reports and Audit Rights*), 23 (*Dispute Resolution Procedure*), 24 (*Reports and Records Provisions*), 25 (*Exit Management*), 28 (*Staff Transfer*), and 32 (*Intellectual Property Rights*), shall survive the termination or expiry of this Contract.

Exit Management

- 33.2 The Parties shall comply with the provisions of Schedule 25 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

- 33.3 If this Contract is terminated by the Authority pursuant to Clause 32.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 32.3(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Contract).
- 33.4 If this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses 32.1(b), 32.1(c) and/or 32.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- (a) payments in respect of any Assets or apportionments in accordance with Schedule 25 (*Exit Management*); and
 - (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

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33.5 The costs of termination incurred by the Parties shall lie where they fall if:

- (a) either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses 32.1(c) or 32.2(c) (*Termination by the Authority*) or 32.3(b) (*Termination by the Supplier*); or
- (b) the Authority terminates this Contract under Clause 32.1(d) (*Termination by the Authority*).

Payments by the Supplier

33.6 In the event of termination or expiry of this Contract, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

33.7 If this Contract is terminated (in whole or in part) by the Authority pursuant to Clause 32.1(b) (*Termination by the Authority*) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a “**Milestone Adjustment Payment Notice**”) require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

33.8 A Milestone Adjustment Payment Notice shall specify:

- (a) each CPP Milestone to which it relates;
- (b) in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Authority wishes to retain, if any (each such Deliverable being a “**Retained Deliverable**”); and
- (c) those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an “**Allowable Price Adjustment**”),

and may form part of a Termination Notice.

33.9 The Supplier shall within 10 Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

- (a) notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
- (b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify

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the Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;

- (c) provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
 - (i) all relevant Milestone Payments; and
 - (ii) the Allowable Price of each Retained Deliverable; and
- (d) provide the Authority with such supporting information as the Authority may require.

33.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 20 Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.

33.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 33.7:

- (a) the Authority shall:
 - (i) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
 - (ii) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and

- (b) all licences granted by the Supplier pursuant to Schedule 32 (*Intellectual Property Rights*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

Termination for convenience

33.12 Where the Authority terminates under Clause 32.1(a), the Authority shall be entitled to exercise any of the following rights in relation to this Contract (or part being terminated) to direct the Supplier to:

- (a) not start work on any element of the Deliverables not yet started;

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- (b) complete in accordance with this Contract the provision of any element of the Deliverables;
- (c) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Deliverables is reduced as quickly as possible; or
- (d) terminate on the best possible terms any Sub-contracts in support of the Deliverables that have not been completed, taking into account any direction given under Sub-Clauses (b) to (c) of this Clause 33.

33.13 Where Clause 33.12 applies (and subject always to the Supplier's compliance with any direction given by the Authority under Clause 33.12):

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

33.14 The Authority's total liability under Clauses 33.12 – 33.16 shall be limited to the total price of the Deliverables payable under the Contract (or relevant part), including any sums paid, due or becoming due to the Supplier at the date of termination.

33.15 The Supplier shall include in any Sub-contract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the Sub-contract under the terms of Clauses 32.1(a) and 33.12 to 33.14 except that:

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- (a) the name of the Contractor shall be substituted for the Authority except in Sub-Clause 33.13(a);
- (b) the notice period for termination shall be as specified in the Sub-contract, or if no period is specified 20 (twenty) Working Days; and
- (c) the Supplier's right to terminate shall be restricted by including the following additional clause "Provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of Clause 32.1(a) of the main contract".

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

SECTION J – MISCELLANEOUS AND GOVERNING LAW

34 COMPLIANCE

Health and Safety

34.1 The Supplier 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 whilst at the Authority Premises.

34.2 Where the Supplier enters an Authority Premises for the purpose of performing work under this Contract:

- (a) The Supplier shall notify the Officer in Charge of:
 - (i) any health and safety hazards associated with the work to be performed by them or any of the Supplier 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 them as well as any precautions which, in their opinion, ought to be taken by the Authority, in order to control such risks.
- (b) The Authority shall notify the Supplier of:
 - (i) any health and safety hazards which may be encountered by the Supplier or any of the Supplier Personnel on the Authority Premises;
 - (ii) any foreseeable risks to the health and safety of the Supplier or any of the Supplier Personnel, associated with such hazards; and

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- (iii) any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Supplier, in order to control such risks.
- (c) The Supplier shall notify the Supplier Personnel of and, where appropriate, provide adequate instruction in relation to:
 - (i) the hazards, risks and precautions notified by them to the Authority under Sub-Clause 33.2(a);
 - (ii) the hazards, risks and precautions notified by the Authority to the Supplier under Sub-Clause 33.2(b); and
 - (iii) the precautions which, in their opinion, ought to be taken by the Supplier Personnel in order to control those risks.
- (d) The Supplier shall provide the Officer in Charge with:
 - (i) copies of those sections of their own and, where appropriate, the Supplier Personnel's Safety Policies which are relevant to the risks notified under Sub- Clause 33.2(a);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by them to the Supplier Personnel under Sub-Clause 33.2(c).
- (e) The Authority shall provide the Supplier with:
 - (i) copies of those sections of its own Safety Policies which are relevant to the risks notified under Sub-Clause 33.2(c);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Supplier under Sub-Clause 33.2(c).

Employment Law

34.3 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

Equality and Diversity

34.4 The Supplier shall:

- (a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

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- (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act, National Security Act and Finance Act

34.5 The Supplier shall:

- (a) take all reasonable steps to ensure that all Supplier Personnel have notice that the Official Secrets Act 1989 and the National Security Act 2023 apply to them and will continue so to apply after the completion or termination of the Contract;
- (b) comply with the provisions of the Official Secrets Act 1989;
- (c) comply with the provisions of the National Security Act 2023; and
- (d) comply with the provisions of section 182 of the Finance Act 1989.

34.5A The Supplier shall, if directed by the Authority, ensure that any Supplier Personnel shall sign a statement acknowledging that, both during the Term of the Contract and after its completion or termination, they are bound by the Official Secrets Act 1989 and the National Security Act 2023 (and where applicable any other legislation).

Conflicts of Interest

34.6 The Supplier:

- (a) must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest; and
- (b) must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest arises or it is anticipated that a Conflict of Interest may arise in the future.

34.6A Where the Supplier provides a notification in accordance with Clause 34.6(b) above the Authority shall inform the Supplier if, in its reasonable opinion, the subject matter of the notification constitutes a Conflict of Interest.

34.6B In the event of a perceived Conflict of Interest the Supplier shall provide the Authority with such reasonable support and assistance as may be required in order to enable the Authority to manage the perceived Conflict of Interest.

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34.6C In the event of an actual or potential Conflict of Interest the Supplier shall provide the Authority with a written proposal informing the Authority how they intend to manage the Conflict of Interest. Where:

- (a) the Supplier notifies the Authority of a Conflict of Interest in accordance with Clause 34.6(b) above the written proposal shall be provided by the Supplier within fifteen (15) Working Days, or such other time as agreed in writing between both Parties, of the confirmation being provided by the Authority in accordance with Clause 34.6A; or
- (b) the Authority otherwise becomes aware of an actual or potential Conflict of Interest the written proposal shall be provided by the Supplier within fifteen (15) Working Days or such other time as agreed in writing between both Parties, of the Supplier receiving written notice from the Authority.

34.6D The Authority will notify the Supplier as to whether it considers the measures proposed by the Supplier in accordance with Clause 34.6C are sufficient to appropriately manage the Conflict of Interest and whether there are any additional reasonable measures that should be put in place.

34.6E The Supplier shall put into place all measures reasonably required by the Authority to actively manage any Conflict of Interest as notified by the Authority in writing.

34.7 Where:

- (a) the Supplier has notified the Authority of a potential or actual Conflict of Interest in accordance with Clause 34.6(b); or
- (b) the Authority has otherwise become aware of an actual or potential Conflict of Interest and has notified the Supplier in writing,

but, in the reasonable opinion of the Authority there are no sufficient measures available to manage the Conflict of Interest, the Authority may terminate this Contract (in whole or in part) immediately by giving notice in writing to the Supplier. If the Authority exercises its right to terminate in accordance with this Clause 34.7, the Supplier shall be entitled to be paid an amount equal to any and all charges payable (but as yet unpaid) for Supplier Deliverables delivered up to the date of termination.

34.7A Any request for payment under Clause 34.7 must be fully supported by documentary evidence.

34.7B If the Supplier:

- (a) fails to notify the Authority of an actual or potential Conflict of Interest in accordance with Clause 34.6(b); or

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- (b) fails to put into place those measures reasonably required by the Authority to manage the Conflict of Interest, as notified to the Supplier in accordance with Clause 34.6E,

this shall constitute a material breach of the Supplier's obligation under this Contract and the Authority shall have the right to terminate this Contract (in whole or in part) with immediate effect by giving written notice to the Supplier in accordance with Clauses 32.1A and 32.1B (Material Breach).

Modern Slavery

34.8 The Supplier:

- (a) shall not use, nor allow its Sub-contractors to use forced, bonded or involuntary prison labour;
- (b) shall not require any Supplier Personnel or the personnel of any Sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- (e) shall make reasonable enquires to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-contractors anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- (h) shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- (i) shall not use, nor allow its employees or Sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-contractors;

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- (j) shall not use or allow child or slave labour to be used by its Sub-contractors;
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-contractors to the Authority and the Modern Slavery Helpline;
- (l) shall comply with any request by the Authority to complete the Modern Slavery Assessment Tool within thirty (30) days of such request;
- (m) shall, if the Supplier or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the guidance *Tackling Modern Slavery in Government Supply Chains*, which can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf

and such remedial action plan shall be deemed to be a Rectification Plan;

- (n) shall comply with any request by the Authority to provide a copy of any reports of any Sub-contractor regarding any or all of workforce conditions, working or employment practices and recruitment practices within fourteen (14) days of such request;
- (o) shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied; and
- (p) shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its operations and supply chains to the Authority and relevant national or local law enforcement agencies.

34.9 If the Supplier notifies the Authority pursuant to Clause 34.11 it 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 the Contract.

34.10 If the Supplier is in Default under Clause 34.8 the Authority may by notice:

- (a) require the Supplier to remove from performance of the Contract any Sub-contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or

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- (b) immediately terminate the Contract.

Whistleblowing

34.11 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority any actual or suspected breach of:

- (a) Law;
- (b) Clauses 34.1 to 34.8 or 34.12; or
- (c) Clause 38.

34.12 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.

35 ASSIGNMENT AND NOVATION

35.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Authority.

35.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 35.2.

35.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 35.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

35.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier were references to the Successor Body).

35.5 Subject to the Supplier obtaining the prior written consent of the Authority in accordance with Clause 35.1 above, the Supplier may assign to a third party

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(“the **Assignee**”) the right to receive payment of the Charges or any part thereof due to the Supplier under this Contract (including any interest incurred by the Authority under any Contract clause concerning the late payment of debts).

35.6 Any assignment of the right to receive payment of the Charges (or any part thereof) under Clause 35.5 above shall be subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under Schedule 15 (*Charges and invoicing*), or any narrative clause concerning recovery of sums due;
- (b) all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and
- (c) the Authority receiving notification under both Clauses 35.7 and Sub-Clause 35.8(b) below.

35.7 In the event that the Supplier obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 35.5 above, the Supplier shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

35.8 The Contractor shall ensure that the Assignee:

- (a) is made aware of the Authority’s continuing rights under Clauses 35.6(a) and 35.6(b); and
- (b) notifies the Authority of the Assignee’s contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with Clauses 35.6(a) and 35.6(b) above.

35.9 The provisions of this Contract, including any clauses concerning payment, shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

35A CONTRACTING WITH RUSSIA/BELARUS

35A.1 The Supplier shall, and shall procure that its Sub-contractors shall, notify the Authority in writing as soon as they become aware that:

- (a) the Supplier Deliverables and/or Services contain any Russian and/or Belarusian products and/or services; or
- (b) the Supplier or any part of the Supplier’s supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian or Belarusian person or entity, provided that this shall not include companies:

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- (i) registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and/or
- (ii) which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.

35A.2 The Supplier shall, and shall procure that its Sub-contractors shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian products, services and/or entities and shall provide all reasonable assistance to the Authority to understand the nature, scope and impact of any such products, services and/or entities on the provision of the Supplier Deliverables and/or Services.

35A.3 The Authority shall consider the notification and information provided by the Supplier and advise the Supplier in writing of any concerns the Authority may have and/or any action which the Authority will require the Supplier to take. The Supplier shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within fourteen (14) Working Days of receipt of the Authority's written concerns, for the Authority's consideration.

35A.4 The Supplier shall include provisions equivalent to those set out in this Clause 35A in all relevant Sub-contracts.

36 WAIVER AND CUMULATIVE REMEDIES

36.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

36.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

37 RELATIONSHIP OF THE PARTIES

37.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

38 PREVENTION OF FRAUD AND BRIBERY

38.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (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.

38.2 The Supplier shall not during the term of this Contract:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, Sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

38.3 The Supplier shall during the term of this Contract:

- (a) establish, maintain and enforce, and require 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 Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 38.3(a) 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.

38.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 38.1 and/or 38.2, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

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- (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.
- 38.5 If the Supplier makes a notification to the Authority pursuant to Clause 38.4, the Supplier 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 12 (*Records, Reports and Audits*).
- 38.6 If the Supplier or any Supplier Personnel are in Default under Clauses 38.1 and/or 38.2 (with or without the knowledge or authority of the Supplier), the Authority shall be entitled:
 - (a) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
 - (b) to recover from the Supplier the amount or value of any such gift, consideration or commission; and
 - (c) to recover from the Supplier any other loss sustained in consequence of any breach of this Clause 38, where the Contract has not been terminated.
- 38.6A In exercising its rights or remedies under this Clause 38, the Authority shall:
 - (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the Prohibited Act;
 - (b) give all due consideration, where appropriate, to action other than termination of the Contract, including (but not limited to):
 - (i) requiring the Supplier to procure the termination of a Sub-contract where the Prohibited Act is that of a Sub-contractor or anyone acting on their behalf; and
 - (ii) requiring the Supplier to procure the dismissal of an employee (whether their own or that of a Sub-contractor or anyone acting on their behalf) where the Prohibited Act is performed by such employee.
- 38.7 Any notice served by the Authority under Clause 38.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has

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committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

- 38.7A Any recovery action taken against any person working for or engaged by the Authority shall be without prejudice to any recovery action taken against the Supplier pursuant to this Clause 38.

39 SEVERANCE

- 39.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 39.2 In the event that any deemed deletion under Clause 39.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 39.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 39.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 23 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 39.3.

40 FURTHER ASSURANCES

- 40.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.

41 ENTIRE AGREEMENT

- 41.1 This Contract together with any software licences associated with this Contract which have been entered into direct between the Authority and any third party constitute the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

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- 41.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 41.3 Nothing in this Clause 41 shall exclude any liability in respect of misrepresentations made fraudulently.

42 **THIRD PARTY RIGHTS**

- 42.1 The provisions of Clause 17.1 (*IPRs Indemnities*), Clause 22 (*Cyber*), Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 28 (*Staff Transfer*) and the provisions of Paragraph 15.8 of Schedule 25 (*Exit Management*) (together “**Third Party Provisions**”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 42.2 Subject to Clause 42.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 42.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 42.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 42.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

43 **NOTICES**

- 43.1 Any notices sent under this Contract must be:
- (a) in writing;
 - (b) authenticated by signature or by such other method as agreed between the Parties;
 - (c) marked for the attention of the appropriate department or officer; and
 - (d) marked in a prominent position with the Contract number.
- 43.2 Subject to Clause 43.4, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
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Email	(i) if transmitted between 09.00 and 17:00 hours on a Working Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; (ii) if transmitted at any other time, at 09.00 on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid 1st Class post (or airmail in the case of notices to or from overseas).	On the third business day (or on the tenth business day, in the case of airmail) after the day of posting.	Properly addressed and prepaid

- 43.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give written notice to the other Party for the purpose of service of notices under this Contract:

	Supplier	Authority
Contact		Contact details to be confirmed by the Authority promptly following the Effective Date

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Address		
Email		

- 43.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or post (or airmail) in the manner set out in the table in Clause 43.2:
- (a) Step-In Notices;
 - (b) Force Majeure Notices;
 - (c) notices issued by the Supplier pursuant to Clause 32.3 (*Termination by the Supplier*);
 - (d) Termination Notices; and
 - (e) Dispute Notices.
- 43.5 Failure to send any original notice by personal delivery or post (or airmail) in accordance with Clause 43.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or post (or airmail) delivery (as set out in the table in Clause 43.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 43.6 This Clause 43 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 23 (*Dispute Resolution Procedure*)).
- 43.7 Where either Party requests written confirmation of any communication which does not constitute a notice such request shall not unreasonably be refused.

44 DISPUTES

- 44.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.

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44.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

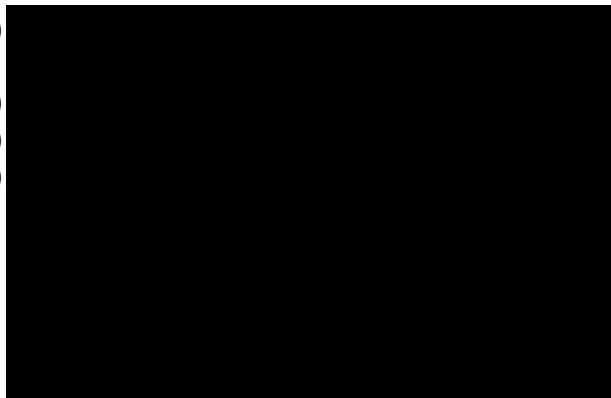
45 GOVERNING LAW AND JURISDICTION

45.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

45.2 Subject to Clause 44 (*Disputes*) and Schedule 23 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

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

SIGNED for and on behalf of)
IBM UNITED KINGDOM LIMITED by a)
director:)
)
)
)



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

