

## **TERMS AND CONDITIONS**

**THIS CONTRACT IS MADE ON:** \_\_\_\_\_ day of \_\_\_\_\_ / 2024

**BETWEEN:**

THE SECRETARY OF STATE FOR DEFENCE (the "**Authority**");

and Babcock Land Defence Limited (BLDL) (the "**Contractor**").

together the Parties.

**BACKGROUND:**

**WHEREAS:**

- 1 The Training Management Group, Navy Command is the management organisation responsible for the delivery of elements of technical training for this Contract. The Secretary of State for Defence has ultimate responsibility the Training Management Group. The Authority is seeking the provision of Mechanical Engineering Training Services to armed service personnel in support of current operations at HMS Sultan (the "Project").
- 2 Throughout the Project, the Parties have entered into this Contract with the intention of providing the Training Services required in the Statement of Requirements as amended from time to time by the change mechanism set out in Schedule 4 (Change and Change Management).
- 3 In so doing, the Parties intend to adopt a flexible and collaborative working environment which will be to the benefit of the Parties.
- 4 Subject to the terms of this Contract, the Authority will provide to the Contractor:
  - a) the right to use certain Intellectual Property for the delivery of Training Services, the use of which is subject to the provisions of Part 12 (Intellectual Property);
  - b) reasonable assistance and support, and access to premises and data to enable the Contractor to perform its obligations under this Contract, and to formulate and develop proposals for improvements and efficiencies within the scope of this Contract; and
  - c) facilities, assets, goods, manpower and services to the extent specified elsewhere in this Contract, and subject to these terms and conditions.
- 5 Each Party shall, in fulfilling their obligations under this Contract, take all reasonable steps to preserve the reputation and good name of the other Party.
- 6 The Parties shall at all times during this Contract act towards each other in a co-operative, non-adversarial manner and having due regard to the high level principles at recital 7.
- 7 The Parties agree that they will observe the following high-level principles in relation to this Contract:
  - a) that there is a need for a structured relationship between their representatives and the Parties have agreed to implement the provisions of Schedule 3 (Governance and Contract Management) in order to observe this principle;

- b) subject always to the provisions of this Contract, that the Contractor will endeavour to identify and deliver reductions in the cost of Training Services to the benefit of both Parties;
  - c) that the Contractor recognises the Authority's requirement to implement change and will work with the Authority to implement approved changes to the Training Services delivered within the scope of this Contract;
  - d) that consideration is given to the preservation of military ethos;
  - e) that each of the Parties needs to follow best commercial practices and procedures in the conduct of their respective businesses; and
  - f) that the Contractor may identify opportunities for the generation of income through the use of the Authority's irreducible spare capacity under the Wider Markets initiative which, if found acceptable to the Authority, will be subject to completely separate contractual arrangements.
- 8 Proposals were submitted on behalf of the Contractor and the Parties have discussed such proposals. The Parties have agreed to enter into this Contract which sets out the terms and conditions upon which the Contractor will carry out the Project.

**IT IS AGREED:**

## **PART 1      PRELIMINARY**

### **1. Definitions**

#### Definitions

- 1.1. In this Contract (including the recitals and schedules), the words defined in Schedule 1 (Definitions) shall have the meanings specified in Schedule 1 and this Contract shall be construed and interpreted in accordance with that schedule.

### **2. Precedence**

- 2.1. In the event of any conflict or inconsistency between the provisions of the terms and conditions of this Contract and the schedules, or between any of the schedules, the conflict shall be resolved according to the following descending order of priority:
  - a. Clause 100 (Third Parties' Rights);
  - b. the terms and conditions of this Contract and Schedule 1 (Definitions), subject to Part 15 (Expiry and Termination);
  - c. Schedule 3 (Governance and Contract Management), Schedule 4 (Change and Change Management), Schedule 6 (Pricing Mechanism), Schedule 7 (Future Pricing and Pricing of Change) and Schedule 12 (Performance Mechanism);
  - d. Schedule 2 (Statement of Requirements); and
  - e. the remaining schedules.
- 2.2. In the event of any conflict or inconsistency between the schedules and the annexes to the schedules, the schedules shall prevail.
- 2.3. If a Party becomes aware of any inconsistency within or between the documents referred to in this Clause 2 such Party's representative (being either the Authority's Representative or the Contractor's Representative) shall notify the other's representative (being either the Authority's Representative or the Contractor's Representative) immediately, and the Parties will seek to resolve such inconsistency in accordance with Schedule 3 (Governance and Contract Management). If either Party considers the inconsistency to be material then the matter shall be determined in accordance with Clause 88 (Dispute Resolution).

### **3. Duration**

- 3.1. This Contract and the rights and obligations of the Parties to this Contract shall take effect on the Effective Date.
- 3.2. Subject to the provisions of Clause 3.3 below, the Training Services shall commence on the Service Commencement Date and, except as set out in Clause 71 (Continuing Obligations), shall terminate on the earlier of:
  - a. the Expiry Date; or
  - b. the Termination Date.
- 3.3. The Authority shall have the right, on giving the Contractor written notice of at least 3 months prior to the Expiry Date, to extend (at its sole discretion) the Contract

Period by six (6) months, such extension being in accordance with Schedule 15 (Options to Extend).

- 3.4. In the event that the Contract Period is extended in accordance with Clause 3.3, the Authority shall have the right (at its sole discretion) to make amendments to the volume and/or scope of the Training Services in accordance with Schedule 4 (Change and Change Management).
- 3.5. In the period between the Effective Date and the Service Commencement Date, the Contractor shall carry out the activities required to assume responsibility for the delivery of the Training Services in accordance with the Implementation Plan.

#### **4. Warranties and Undertakings**

##### **Contractor Warranties**

- 4.1. The Contractor warrants and represents to the Authority that:
  - a. it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
  - b. it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
  - c. all action necessary on the part of this Contractor to authorise the execution of, and the performance of, its obligations under this Contract has been taken;
  - d. no arrangements are in place that have, or may have, the result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any, or all, of the shares in the Contractor;
  - e. the obligations expressed to be assumed by the Contractor under this Contract are, or in the case of any such document executed after the Effective Date shall be, legal, valid, binding and enforceable to the extent permitted by Law;
  - f. the execution, delivery and performance by it of this Contract does not contravene any provision of:
    - (1) any existing Legislation binding on this Contractor including Legislation which has been enacted but is not yet in force;
    - (2) the memorandum and articles of association of the Contractor;
    - (3) any order or decree of any court or arbitrator which is binding on the Contractor; or
    - (4) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
  - g. no claim is presently being assessed and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which shall, or might, have a

material adverse effect on the ability of the Contractor to perform its obligations under this Contract;

- h. it is not the subject of any other obligation, compliance with which shall, or is likely to, have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- i. no Contractor Default has occurred which is continuing, nor has any event or circumstance occurred or arisen which, with the giving of notice, lapse of time, determination or satisfaction of any other Clause may become a Contractor Default;
- j. it is not in breach of any of its obligations under this Contract;
- k. no proceedings or other steps have been taken and not discharged nor, to the best of the knowledge of the Contractor (having made all due enquiry) threatened for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- l. the copies of any Contract Documents which the Contractor has delivered or, when executed, shall deliver to the Authority's Representative, are or, as the case may be, shall be, true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of this Contract which would materially affect the interpretation or application of any such document;
- m. in entering into this Contract it has not committed any Prohibited Act; and
- n. there is not, and nor has there been, any infringement or alleged infringement of any third party's Intellectual Property Rights in connection with the Project by the Contractor, and the Authority relies upon such warranties and representations.

#### Contractor Undertakings

4.2. The Contractor covenants and undertakes with the Authority that for so long as this Contract remains in full force:

- a. it will obtain, comply with the terms of, and do all that is necessary and within its powers to maintain in full force and effect all necessary corporate and other actions required to authorise the execution of, and the performance of its obligations under, this Contract;
- b. it shall give the Authority's Representative notice of any litigation, arbitration, administrative, adjudication or mediation proceedings before or of any court, arbitrator, administrator, adjudicator or mediator or other Authority dispute forum against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of the Project, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the dispute forum. Such notice shall be given within 20 Business Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement;
- c. it will not voluntarily enter into liquidation or a dissolution;

- d. it shall not cease to be resident in the United Kingdom or sell, transfer, lend or dispose of (other than by way of security) in whole, or in part, its undertaking, business or trade outside the United Kingdom;
- e. it shall not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;
- f. it shall not, without the written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed), incorporate any company or purchase or acquire or subscribe for any shares in any company if to do so shall, or might, adversely affect the Contractor's financial standing and its ability to perform its obligations under this Contract and does not contravene Clause 6.2;
- g. it shall not, without the written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed), make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person, or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by this Contract;
- h. it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract; and
- i. in the performance of its obligations under this Contract, it shall comply with Establishment Orders and the Codes of Conduct for Military Instructors.

#### Status of Contractor Warranties and Undertakings

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

#### Contractor's Due Diligence

- 4.4. The Contractor shall be deemed to have:
  - a. satisfied itself as to the assets to which it shall acquire rights and the nature and extent of the risks assumed by it under this Contract;
  - b. satisfied itself as to the feasibility and strategy of its Implementation Plan; and
  - c. without prejudice to Clause 60 (Disclosure of Information), satisfied itself with regards to information not provided by the Authority as to the ownership of any Intellectual Property Rights and as to its rights to use Intellectual Property Rights to perform its obligations under this Contract.

#### Accuracy of Information

- 4.5. The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the

provision of the Training Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions.

## **5. Authority Disclosed Data**

### **Authority Disclosed Data**

- 5.1. Subject to Clause 5.3, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority during the course of the procurement of this Contract (with the exception of any Authority Disclosed TUPE Data, to which the provisions of Clause 48 (TUPE and Pension Matters) shall apply) and neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- a. any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority during the course of the procurement of this Contract; or
  - b. any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to this Contract.

### **No Relief**

- 5.2. Subject to Clause 5.3, the Contractor shall not in any way be relieved from any obligation under this Contract, nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and it shall make its own enquiries as to the accuracy and adequacy of that information.

### **Fraudulent Statements**

- 5.3. Nothing in this Clause 5 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the Effective Date.

## **6. Co-operation**

- 6.1. Each Party agrees to co-operate, at its own cost, with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other Party's obligations under this Contract.
- 6.2. Each Party shall, in fulfilling their obligations under this Contract, take all reasonable steps to preserve the reputation and good name of the other Party.



## **PART 2 CONDUCT OF OPERATIONS**

### **7. Scope of Contract**

- 7.1. The Contractor shall provide the Training Services set out in Schedule 2 (Statement of Requirements) in accordance with the terms of this Contract from the Service Commencement Date.
- 7.2. In the event that the Authority identifies additional requirements or changes to existing Training Services, the Contractor may be requested to submit a proposal for consideration by the Authority in accordance with the provisions of Schedule 4 (Change & Change Management).
- 7.3. Activities directly in support of sea-going ships, operations or exercises abroad are excluded from the scope of this Contract except where specifically identified within the Training Documentation.

### **8. Specification**

- 8.1. All Training Services to be supplied under this Contract shall conform in all respects with the Statement of Requirements set out in Schedule 2 (Statement of Requirements).
- 8.2. The Authority may, by notice, after consultation with the Contractor as necessary, alter from time to time the Statement of Requirements as from a date and to the extent specified by the Authority provided that any alterations will be made in accordance with Schedule 4 (Change and Change Management).
- 8.3. In the event that either Party considers that there may be any conflict within the Authority's Statement of Requirements it shall notify the other Party. In such circumstances the Authority shall decide, following consultation with the Contractor, how to resolve the conflict within the Statement of Requirements and shall inform the Contractor accordingly by providing an updated copy of the Statement of Requirements with the conflict resolved. Any such variation shall be recorded in a formal amendment to the Contract executed by the Authority and Contractor. If the Contractor disputes any variation to the Statement of Requirements following consultation, then the Authority shall have the right to terminate the Contract and termination shall be in accordance with Clause 66 (Break).
- 8.4. Any acceptance, authorisation, consent, comment, suggestion, requirement, proposal, consideration, audit, inspection, or approval of designs, drawings, specifications, plans, schedules, or the issue of any other technical and administrative documents by the Authority which is not done or given in accordance with this Contract shall not alter the Statement of Requirements.

### **9. Provision of Services**

- 9.1. The Contractor undertakes to the Authority that:
  - a. it shall perform or procure that the Training Services and its obligations are performed:
    - (1) in an efficient, effective and safe manner;
    - (2) so as to satisfy Schedule 2 (Statement of Requirements);
    - (3) in compliance with Law;

- (4) in accordance with Good Industry Practice; and
  - (5) using suitable goods and materials that are not Prohibited Materials;
- b. it shall be responsible for all goods and materials brought onto the Establishments by or on behalf of the Contractor or any Sub-Contractor; and
- c. it shall perform its obligations under this Contract in a manner that will enable the Authority to comply with the Law.

9.2. The Parties agree to the principle of Presumed Inclusion, whereby:

- a. all activities, tasks, materials and services necessary to deliver the Training Services are deemed to be included within the Contract and are the responsibility of the Contractor save for express obligations and/or dependencies on the Authority or any third party (other than any Subcontractor, employee or representative of the Contractor) stated in this Contract or any other document referenced in this Contract;
- b. the Contractor shall not be required to undertake any task or activity which is not necessary for the performance of the Training Services unless the Parties agree a change in accordance with Schedule 4 (Change and Change Management);
- c. in the event that there is a dispute as to whether an activity, task, material or service is necessary to deliver the Training Services then either Party may refer the matter to be determined under Clause 88 (Dispute Resolution);
- d. All Allowable Costs associated with the performance of the Training Services and the Contractor's obligations under this Contract are deemed to be included in the Contract Price unless i) expressly stated otherwise within the Contract or ii) it is otherwise agreed by the Parties or determined pursuant to Clause 88 (Dispute Resolution) that the activities, tasks, materials and/or services in respect of which Allowable Costs are sought by the Contractor are not necessary to deliver the Training Services and a change is agreed in accordance with Schedule 4 (Change and Change Management) to incorporate such tasks, activities, materials and/or services into the Training Services.
- e. irrespective of whether either Party elects to refer a matter in respect of Presumed Inclusion to the Dispute Resolution procedure, the Contractor shall perform any task, activity, service or provision of the material referred for resolution pursuant to Clause 88 (Dispute Resolution) without delay at the Contractor's cost pending resolution of the dispute; and in the event that following determination of the dispute it is determined that the activity, task, material or service was:
  - (1) necessary for the performance of the Training Services the cost of the activity, task, material or service shall be included within the Allowable Costs but with no adjustment to the Fixed Price.

- (2) not necessary for the delivery of the Training Services then within 5 Business Days of the date of final resolution of the Dispute Resolution Procedure, the Authority shall either:
- (a) elect not to continue with the activity, task, material or service and in such circumstances shall reimburse the Contractor the fair and reasonable costs of work undertaking in providing such activity, task, material or service up to and including the date of notification of such election; or
  - (b) elect to continue with the activity, task, material or service in which case the Parties shall agree a change in accordance with Schedule 4 (Change and Change Management) and the costs of the provision of such activity, task, material or service shall be included in accordance with Schedule 7(Future Pricing and Pricing of Change).

The Authority shall notify the Contractor of its election in writing.

#### Authority Policies

- 9.3. In providing the Training Services, the Contractor shall;
- a. comply with the Authority's policy on smoking in the workplace contained in JSP 375;
  - b. comply with the Authority's health and safety guidance contained in JSP 375;
  - c. comply with the Authority's policy on Environmental Protection contained in JSP 418;
  - d. comply with the Authority's Code of Conduct for Military Instructors, as may be amended from time to time; and
  - e. have in place procedures to ensure, and use reasonable endeavours to ensure, that employees of the Contractor or any Sub-Contractor do not consume, or become under the influence of, alcohol or narcotics while performing their obligations under this Contract or any Sub-Contract.

#### No Disruption

- 9.4. The Contractor shall provide the Training Services so as to co-ordinate with the Authority's operations on the Establishments and shall take reasonable care to ensure that it does not interfere with the operations or activities of the Authority or any Authority Contractor.
- 9.5. The Authority undertakes to the Contractor that it shall not, except as expressly permitted under this Contract, wilfully or materially impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority and of the Contractor and to any operations or activities carried out by the Authority in or at the Establishments for the purposes contemplated by this Contract or any other of the Authority's statutory duties or other functions).

#### Standards of Employees

- 9.6. The Contractor shall ensure that its employees and those employees employed by its Sub-Contractors delivering the Training Services shall:
- a. subject to Clause 9.7, possess all the necessary qualifications, licences, permits, skills and experience to discharge their responsibilities effectively, safely and in conformance with all relevant Law;
  - b. be trained in customer care and conduct themselves in a polite and orderly fashion conducive to working in a military environment;
  - c. meet and comply with the requirements of the Authority's security policies, regulations and instructions and shall be trained to conform with the required security standards as detailed in Part 13 (Security and Confidentiality); and
  - d. each to the satisfaction of the Authority and the Authority shall have the right to make a written request of evidence, documentary or otherwise, of the above in respect of any or all Contractor Employees or Sub-Contractor Employees whereupon the Contractor shall make all reasonable endeavours to provide such evidence within 14 Business Days of the Authority's request.
- 9.7. 9.7 In respect of employees transferred to the Contractor pursuant to TUPE and who do not have the necessary qualifications, licences, permits, skills and experience referred to in Clause 9.6a at the time of transfer to the Contractor, the Contractor shall take all necessary steps to ensure that the standards of such employees meet the standards required by Clause 9.6a as soon as reasonably practicable after the date on which such employees transferred to the Contractor and in any event no later than three months following the Service Commencement Date (or such other period as may be agreed between the Parties).

#### Disciplinary Procedures

- 9.8. The Contractor shall set up and maintain and shall ensure its Sub-Contractors set up and maintain, for the duration of this Contract, appropriate personnel policies and procedures covering discipline, grievance and performance in respect of all staff (the "Relevant Procedures"). The Contractor shall procure that the Relevant Procedures are published in written form and that copies of them and revisions and amendments to them are available to the Authority at each Establishment for inspection at all reasonable times. The Authority shall have the right to make reasonable comments and objections in relation to the Relevant Procedures and the Contractor shall amend the Relevant Procedures or shall procure their amendment by the Sub-Contractor within 14 Business Days of such comment or objection being notified to it by the Authority.
- 9.9. The Authority's Representative may require the Contractor to apply the Relevant Procedures, or amended procedures pursuant to Clause 9.8 as applicable, to any Contractor employee, or may require the Contractor to require the Sub-Contractor to apply the Relevant Procedures, or amended procedures pursuant to Clause 9.8 as applicable, to any Sub-Contractor Employee, if, in the reasonable opinion of the Authority's Representative:
- a. that Contractor employee or Sub-Contractor Employee commits an act of misconduct (whether or not in the course of their duties); or

- b. that Contractor employee or Sub-Contractor Employee is incompetent or negligent,

and the application of the Relevant Procedures would be conducive to the orderly and effective provision of any of the Training Services. The Contractor shall immediately comply with that requirement at its own risk and cost. For the avoidance of doubt, this Clause does not limit the Contractor's obligation to comply with Clause 9.8.

#### List of Staff

9.10. Subject to Clause 56 (Security Requirements), the Contractor shall procure that the Authority's Representative is given details of all Proposed Staff (other than existing employees) and that the Authority shall have a right to make representations promptly to the Contractor in respect of any such Proposed Staff member's employment if:

- a. the person has previously been engaged in the carrying out of this Contract and is considered by the Authority's Representative to be unsatisfactory; or
- b. there is any other good and substantial reason why the person should not be engaged in carrying out the Training Services,

and the Contractor must have due regard to those representations although the final decision whether to appoint Proposed Staff will be a matter for the Contractor.

#### Access

9.11. Save as required by Law, the Contractor shall procure that the Authority (including the Authority's Representative) has access in accordance with Clause 34 (Open Book Accounting and Auditing) to all relevant information which demonstrates that the Contractor has complied with the provisions of this Clause 9. The Authority shall, in accordance with Clause 34, be entitled to conduct audits of the personnel and management policies of the Contractor and the Sub-Contractors which relate to the provision of the Training Services.

#### Contractor Plans

9.12. The Contractor has prepared the plans contained in the relevant Schedules and notwithstanding that the plans have been seen or acknowledged by the Authority or approved or not objected to or commented on by the Authority, the Contractor shall be solely responsible for:

- a. any discrepancies, errors or omissions in the plans; and
- b. any failure of the plans to comply with the Authority's Statement of Requirements.

### **10. Business Continuity**

10.1. The Contractor shall comply with its obligations contained in the Business Continuity Plan.

### **11. Special Terms and Conditions – Training Support**

#### Radio Transmissions

- 11.1. Where in the UK it is necessary for the Contractor to make radio transmissions for the purpose of test and development of electronic equipment under this Contract, the Contractor shall obtain an appropriate licence from the UK Regulatory Authority: Office of Communications (Ofcom) in accordance with the Wireless Telegraphy Act 2006.
- 11.2. The Contractor shall ensure that prior to making any transmission, a licence exists that covers the particular transmissions required under this Contract in all respects.
- 11.3. The Contractor shall agree with the Authority the frequencies to be used for this Contract.
- 11.4. For the avoidance of doubt, the provisions of Clauses 11.1 to 11.3 shall apply to the Contractor's own radio transmissions and equipment and not radio transmissions to be made using Authority radio equipment in the delivery of the Training Services in accordance with Schedule 2 (Statement of Requirements).

## **12. Transport Overseas**

- 12.1. Where a Contractor Employee, Sub-Contractor, agent or consultant authorised to act on behalf of the Contractor is required by this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by Authority chartered aircraft. The Contractor shall make such arrangements through the Authority's Representative. When such transport is not available within a reasonable time or in circumstances where the Contractor wishes its employees, Sub-Contractors, agents or consultants to accompany materiel for installation which it is to arrange to be delivered, the Contractor shall make its own transport arrangements but shall agree the cost of such transport with the Authority prior to the event save in circumstances where, due to extreme urgency, it was not reasonably possible to obtain prior approval for such costs from the Authority in advance. The Authority shall reimburse the Contractor's reasonable costs for such transport on presentation of evidence supporting the use of alternative transport and of the costs involved and approvals obtained/reasons for not obtaining approvals in advance. If, on any occasion, the Authority considers the cost of travel to be unreasonable, then it shall agree with the Contractor to reimburse a sum which it considers to be reasonable together with evidence of its determination which may comprise of the price of comparable modes of travel for the relevant itinerary. In the event that there is a dispute relating to the reasonable costs of overseas travel of Contractor Employees, Sub-Contractor Employees, agents or consultants then either Party may refer the matter to be determined under Clause 88 (Dispute Resolution Procedure).

## **13. Injuries, Disease And Dangerous Occurrences**

- 13.1. The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 ("RIDDOR") to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

**PART 3        IMPLEMENTATION PHASE**

**14.    Implementation**

- 14.1. During the Implementation Phase, the Contractor shall implement the Implementation Plan to enable it to ensure the smooth and seamless transfer of the Training Services from the Previous Contracts to this Contract.

**PART 4 GOVERNANCE AND MANAGEMENT PROCESSES**

**15. Governance and Contract Management**

15.1. The Parties shall comply with their obligations set out in Schedule 3 (Governance and Contract Management).

**16. Contractor Plans**

16.1. The Contractor shall (in accordance with the terms of this Contract and otherwise to the reasonable satisfaction of the Authority) implement the Contractor plans set out in Schedule 30 (Deliverable Quality Plans).



**PART 5      TESTING AND AUTHORISATION OF TRAINING COURSES**

**17.      Testing and Authorisation of Training Courses**

- 17.1. The provisions for the testing and authorisation of training courses as contained in Schedule 2 (Statement of Requirements) shall have effect.

## **PART 6 GOVERNMENT ESTABLISHMENTS**

### **18. Contractor's Personnel At Government Establishments**

- 18.1. The Officer in Charge shall provide such available administrative and technical facilities for the Contractor Employees, Sub-Contractor employees, agents or consultants authorised to act on behalf of the Contractor or the Sub-Contractor, as the case may be, employed at Government Establishments for the purpose of this Contract as the Officer in Charge, upon consultation with the Contractor or Sub-Contractor, considers necessary for the effective and economical discharge of work under this Contract. These facilities will be provided free of charge unless otherwise stated in this Contract. The status to be accorded to the Contractor Employees, Sub-Contractor Employees, agents or consultants authorised to act on behalf of the Contractor for messing purposes will be at the discretion of the Officer in Charge.
- 18.2. Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with this Contract shall be made available to the Contractor free of charge, unless otherwise stated in this Contract, and shall be used by the Contractor solely for the purposes of performing this Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of this Contract. During the Contract Period the Authority shall be responsible for the modification, repair, maintenance and cleaning of, and utilities for, any premises made available to the Contractor under the Licence.
- 18.3. The Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to it prior to entering into this Contract.

### **19. Liability In Respect Of Damage To Authority Property**

- 19.1. Without prejudice to the provisions of Clause 27 (Issued Property), the Contractor shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Authority Property, which includes land or buildings, occasioned by the Contractor, the Contractor employees, any Sub-Contractor, any Sub-Contractor Employees, any agents or consultants of the Contractor or Sub-Contractor, arising from its or their presence on a Government Establishment in connection with this Contract, provided that this Clause 19 shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its or their reasonable control.
- 19.2. The total liability of the Contractor under Clause 19.1 shall be subject to any limitation specified in this Contract.

### **20. Contractor's Property**

- 20.1. All property of the Contractor, the Contractor employees, any Sub-Contractor, any Sub-Contractor Employees, and any agents or consultants of the Contractor or Sub-Contractor shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- a. where any such loss or damage was caused or contributed to by any act, neglect or default of any Authority Employee, agent or contractor then the

Authority shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

- b. where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

## **21. Contractor's Representatives**

21.1. The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of its employees, Sub-Contractors, Sub-Contractor Employees, agents or consultants authorised to act on behalf of the Contractor who may need to enter a Government Establishment for the purpose of, or in connection with, work under this Contract, giving such particulars as the Authority may require, including full details of birthplace and parentage of any such Contractor employee, Sub-Contractor, Sub-Contractor Employee, agent or consultant authorised to act on behalf of the Contractor who:

- a. was not born in the United Kingdom; or
- b. if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.

21.2. The Authority shall issue passes for those Contractor employees, Sub-Contractors, Sub-Contractor Employees, agents or consultants authorised to act on behalf of the Contractor who are approved by the Authority in accordance with Clause 21.1 for admission to a Government Establishment and a Contractor employee, Sub-Contractor, Sub-Contractor Employee, agent or consultant authorised to act on behalf of the Contractor 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.

21.3. Notwithstanding the provisions of Clauses 21.1 and 21.2, if, in the opinion of the Authority, any Contractor employee, Sub-Contractor, Sub-Contractor Employee, agent or consultant authorised to act on behalf of the Contractor or the Sub-Contractor behaves in a manner that could be reasonably deemed to constitute misconduct; is in the opinion of the Authority contrary to applicable Health and Safety Legislation; where the relevant person's engagement by the Contractor or Sub-Contractor is deemed by the Authority to be contrary to the public interest, the rules of the Establishment, contrary to the principles the ethos of Royal Air Force, then the Contractor shall remove or procure the removal of such person without delay on being required to do so by the Authority's Representative and shall cause the work to be performed by such other person as may be necessary.

21.4. The decision of the Authority upon any matter arising under Clauses 21.1 to 21.3 inclusive shall be final and conclusive.

## **22. Health And Safety Hazard Control**

22.1. Where the Contractor enters a Government Establishment for the purpose of performing work under this Contract, within three Business Days prior to such entry:

- a. the Contractor shall notify in advance the Officer in Charge or the Establishment project liaison officer or overseeing officer nominated in this Contract of:
  - (1) any health and safety hazards associated with the work to be performed by it or any of the Contractor employees, Sub-Contractors, Sub-Contractor Employees, agents or consultants;
  - (2) any foreseeable risks to the health and safety of all persons associated with such hazards; and
  - (3) any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the Authority, in order to control such risks;
- b. the Authority shall notify the Contractor of:
  - (1) any health and safety hazards which may be encountered by the Contractor or any of the Contractor employees, Sub-Contractors, Sub-Contractor Employees, agents or consultants on the Government Establishment;
  - (2) any foreseeable risks to the health and safety of the Contractor or any of the Contractor Employees, Sub-Contractors, Sub-Contractor Employees, agents or consultants, associated with such hazards; and
  - (3) any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks;
- c. the Contractor shall notify the Contractor employees, Sub-Contractors, agents or consultants of and, where appropriate, provide adequate instruction in relation to:
  - (1) the hazards, risks and precautions notified by it to the Authority under Clause 22.1a;
  - (2) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 22.1b; and
  - (3) the precautions which, in its opinion, ought to be taken by its employees, Sub-Contractors, agents or consultants in order to control those risks;
  - (4) relevant applicable Health and Safety Legislation.
- d. the Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in this Contract with:
  - (1) copies of those sections of its own and, where appropriate, the Contractor Employees', Sub-Contractors', agents' or consultants' safety policies which are relevant to the risks notified under Clause 22.1a;
  - (2) copies of any related risk assessments; and

- (3) copies of any notifications and instructions issued by it to its employees, Sub-Contractors, agents or consultants under Clause 22.1c; and
- e. the Authority shall provide the Contractor with:
  - (1) copies of those sections of its own safety policies which are relevant to the risks notified under Clause 22.1b;
  - (2) copies of any related risk assessments; and
  - (3) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under Clause 22.1c.

## **23. Hazardous Substances**

### **Supply of Data for Hazardous Articles, Materials and Substances**

#### **23.1. The Contractor shall provide to the Authority:**

- a. for each hazardous material or substance supplied, a Safety Data Sheet (“SDS”) in accordance with the Classification, Labelling and Packaging (CLP) Regulation 1272/2008, and
- b. for each hazardous article, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.

Nothing in this Clause 23 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.

#### **23.2. If the item of supply contains or is a substance falling within the scope of the Regulation (EC) No 1907/2006 (for the purposes of this Clause 23.2, the “Regulation”):**

- a. the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall, within three Business Days, update the SDS and forward it to the Authority and to the address listed in Clause 23.8; and
- b. the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the safety data sheet supplied, shall, within three Business Days, report this information in writing to the Contractor.
- c. In the event that the Regulation no longer applies to the UK, the Contractor shall comply with any equivalent Legislation enacted under English law.

#### **23.3. If the Contractor is required, under, or in connection with this Contract, to supply articles or components of articles that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, it shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.**

- 23.4. Prior to any delivery of any hazardous materials or equipment to an Establishment, the Contractor shall provide information to the Authority's Representative on such hazardous materials or equipment in the form of Schedule 20 (Hazardous Substances) (DEFFORM 68)
- 23.5. If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the CLP Regulation 1272/2008 and the Regulation, the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
- 23.6. If the articles, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:
- a. the activity; or
  - b. the substance and form (including any isotope).
- 23.7. If the articles, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.
- 23.8. Any SDS to be provided in accordance with this Clause 23, including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 23.1a and 23.2a, any information arising from the provisions of Clauses 6, 7 and 8 and the completed Schedule 20 (Hazardous Substances), shall be sent directly to the Authority's Nominated Commercial Officer as soon as practicable, and not less than one month prior to the Service Commencement Date. In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
- a. hard copies to be sent to:  
  
Hazardous Stores Information System (HSIS)  
Department of Safety & Environment, Quality and Technology (D S & EQT)  
Spruce 2C, #1260,  
MOD Abbey Wood (South)  
Bristol BS34 8JH; and
  - b. emails to be sent to [DESTECH-QSEPEnv-HSISMulti@mod.gov.uk](mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk)
- 23.9. In addition to the above, the Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Training Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Authority of all such materials being used or stored at any Establishment and shall comply with any other reasonable requirement of the Authority in respect of such materials and equipment.
- 23.10. The Contractor shall maintain a register of substances hazardous to health in relation to each Task and shall ensure that a copy of each register is held at the Contractor's registered office and that a copy is given to the Authority's Representative. The Authority's Representative shall notify the Contractor of any

items relating to the Contract and the Training Services which it or any Authority Contractor is using or storing at any Establishment and which it requires to be included in such register.

- 23.11. The Contractor shall comply with the Hazardous Waste Regulations 2005 and the List of Wastes (England) Regulations 2005 in respect of any Hazardous Waste produced directly by the Contractor in the delivery of this Contract. Where Hazardous Waste is a direct result of articles of GFA being supplied by the Authority then the Hazardous Waste will be disposed of in accordance with the relevant Establishment's Waste Management Plans in Schedule 31 (Procedures for Waste Disposal).

## **24. Land and Buildings**

- 24.1. The Authority shall grant to the Contractor, and the Contractor shall take the Licence of the Licenced Premises on the Service Commencement Date (as set out in Schedule 27).

## **25. Contractor's Conduct on Authority Establishments**

- 25.1. Subject to Clause 0, the Contractor shall, and shall procure that any Sub-Contractor shall, in providing the Training Services at the Establishments:

- a. not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Establishment or any part of it (save in accordance with the terms of this Contract);
- b. observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Establishments, and the Contractor shall ensure that the provision of the Training Services is carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation;
- c. not use or occupy the Establishments for any purpose other than the provision of the Training Services;
- d. not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from the Establishments into any rivers or any ditches or conduits on the Establishments and/or any adjoining property, and not permit or suffer the blockage of any of such rivers, ditches and conduits by reason of anything done or omitted on the Establishments by the Contractor or Sub-Contractors, and shall comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority so far as such requirements relate to the provision of the Training Services;
- e. procure that those parts of the Establishment which are from time to time occupied by the Contractor and/or Sub-Contractor for the purpose of the provision of the Training Services are maintained, to the satisfaction of the Authority's Representative, in a clean, orderly, safe and secure state; and
- f. not without the written consent of the Authority's Representative (not to be unreasonably withheld or delayed) erect any temporary structure.

- 25.2. The Authority's Representative shall have the right to raise in writing any issue relating to the Contractor or Sub-Contractor's conduct in or maintenance of any part of the Establishment that is occupied by the Contractor or the Sub-Contractor whereupon the Contractor shall, as soon as reasonably practicable, address such objection to the satisfaction of the Authority's Representative. Such rights are without prejudice to any rights granted to the Authority pursuant to Part 15 (Expiry and Termination) of this Contract.
- 25.3. No act or omission of the Authority or an Authority Contractor shall result in the Contractor being in breach of Clause 25.1 unless such act or omission arises out of or in connection with the Authority or an Authority Contractor acting on the instruction of the Contractor or Sub Contractor.



## **PART 7 GOVERNMENT FURNISHED ASSETS**

### **26. Government Furnished Assets**

- 26.1. The Authority shall make available to the Contractor free of charge the Government Furnished Assets as set out within Schedule 10 (Authority Obligations) and within Schedule 2 (Statement of Requirements).
- 26.2. The Contractor shall not create or grant any form of benefit or interest in Government Furnished Assets whether by way of security or otherwise.
- 26.3. For the purposes of this Clause 26 and Clause 27 (Issued Property), the date of issue for Issued Property or Government Furnished Assets shall be the Service Commencement Date and such Issued Property or Government Furnished Assets shall be available until the earlier of the Termination Date or the Expiry Date.

### **27. Issued Property**

- 27.1. All Issued Property shall remain the property of the Authority. It shall be used in the execution of this Contract and for no other purpose, without the prior approval in writing of the Authority.
- 27.2. Neither the Contractor, nor any Sub-Contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, Sub-Contractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.
- 27.3. Subject to Clauses 27.4 and 27.7 below, within 14 days of receipt of Issued Property, the Contractor shall:
  - a. check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;
  - b. conduct a reasonable visual inspection;
  - c. conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided; and
  - d. notify the Authority of any defects, deficiencies or discrepancies discovered.
- 27.4. Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 27.3 above shall count from the date on which packages are opened.
- 27.5. The Authority shall within a reasonable time after receipt of any notice under Clause 27.3 replace, re-issue or authorise repair of Issued Property which it considers to be defective or deficient and, if appropriate, the Authority shall revise the Contract Price, Statement of Requirements or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
- 27.6. In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 27.3, fair and reasonable revisions of the Contract Price, Statement of Requirements or both shall be made in accordance with Schedule 4

(Change and Change Management) as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.

27.7. Clauses 27.3 to 27.6 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 this Contract; and
- b. where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract.

27.8. Subject to Clause 27.11 below, and any limitation or exclusion of liability as may be specified in this Contract, the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Training Services, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions.

27.9. The Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in this Contract.

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

27.11. The Contractor shall not be liable in respect of:

- a. defects or deficiencies notified to the Authority in accordance with Clause 27.3 or latent Issued Property defects which the Contractor can show, to the satisfaction of the Authority, could not reasonably have been discovered by means of the activities described at Clause 27.3.
- 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 Contractor);
- c. Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract; and
- d. any loss or damage to Issued Property arising solely from a Force Majeure Event, but only where such loss or damage could not have been prevented by reasonable mitigation measures taken by the Contractor;
- e. Any dispute between the Parties relating to this Clause 27.11 shall be determined in accordance with Clause 88 (Dispute Resolution Procedure);

27.12. At the Expiry Date or Termination Date, whichever is the earlier, the Contractor shall forward a list of Issued Property still held to the Authority's Representative. Return or disposal of such Issued Property will be as instructed by the Authority at Contract completion. If no disposal instructions are specified in this Contract the Authority shall provide such instructions within two months of the Contractor's written request to do so.

27.13. The Authority shall confirm receipt of returned Issued Property in writing to the Contractor within 30 Business Days of such receipt.

**28. Accounting for the Property of the Authority**

28.1. The Contractor shall:

- a. open and maintain a Public Store Account, as defined in Schedule 21 (DEFSTAN 05-99), which shall include a complete list of all property of the Authority, as defined in Clause 28.2, and record for that property, all transactions or other accounting information specified at Schedule 23 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records);
- b. supply to the Authority quarterly reports on the current Public Store Account holdings. At least one report in any twelve-month accounting period or part shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in Schedule 21 (DEFSTAN 05-99). The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;
- c. ensure that all property of the Authority recorded in the Public Store Account including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time;
- d. on being given two months' notice, permit and co-operate with the Authority to conduct audits of the Public Store Account in a manner to be determined by the Authority. Where the Authority has reasonable grounds to doubt the integrity of the Public Store Account to the extent that the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
- e. retain the Public Store Account for a period of three years after disposal of the last item of the property of the Authority and after such disposal, upon written request from the Authority, supply the Authority with a copy of any report on the Public Store Account within 14 Business Days;
- f. if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's Public Store Account for property of the Authority issued in aid of this Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors only the provisions corresponding to those set out in this Clause 28 that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses 28.1, 28.2, 28.4 and 28.7; and
- g. manage the Government Furnished Assets component of the Public Store Account in accordance with the provisions of Schedule 21 (DEFSTAN 05-99) and implement any new edition of or amendment to Schedule 21 (DEFSTAN 05-99) subject to Clause 8 (Specification) within three months of the publication date of the new edition. These amendments shall not have retrospective effect.

- 28.2. For the purposes of this clause 'property of the Authority' means Government Furnished Assets and fixed assets, including property issued under Clause 27 (Issued Property) and property of the Authority issued to the Contractor under any other authorising document except for property vested in the Authority.
- 28.3. For the avoidance of doubt, it is a condition of this Contract that this Clause 28 shall apply to all property issued to the Contractor from the Effective Date, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.
- 28.4. The obligations of the Contractor arising under this Clause 28 in respect of property of the Authority issued in aid of this Contract shall survive the Expiry Date or Termination Date and shall not be completed until all such obligations are fulfilled including the provisions of Clause 28.1e.
- 28.5. The obligations of the Contractor arising under this Clause 28 in respect of property of the Authority unconnected with this Contract shall survive the Expiry Date or Termination Date and shall not be completed until all those obligations are fulfilled including the provisions of Clause 28.1e unless and until a subsequent contract containing this Clause 28 and relating to the relevant property is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.
- 28.6. If, after the Expiry Date or Termination Date, no subsequent contract is placed containing this Clause 28 within the period detailed at Clause 28.1e, then the obligations of the Contractor arising under this Clause 28 in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed at Clause 28.1e.
- 28.7. The Authority reserves the right to amend Schedule 23 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records) without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause 28.7, Schedule 23 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records) shall be regarded as a Specification and subject to the terms of Clause 8 (Specification). If the Authority exercises this right:
- a. the Contractor shall implement the amendment to Schedule 23 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records) at the commencement of the Authority's next accounting year provided that a notice of six months or such other period as may expressly be agreed between the Authority and Contractor is given to the Contractor. These amendments shall not have retrospective effect; and
  - b. the Contractor shall inform the Authority as soon as practicable, but in any event within three months of notice having been given, if the Contractor cannot comply with the amendment to Schedule 23 (Accounting for Property of the Authority – Data and Format Requirements for Public Store Account Records).

- 28.8. All assets, articles and equipment purchased by the Contractor solely for the purposes of this Contract shall become the property of the Authority upon purchase (and for accounting purposes shall be written off by the Contractor in the year of purchase) and shall subsequently be recorded as appropriate in the Public Store Account and treated in accordance with the terms of Clause 27 and this Clause 28. The Contractor shall be wholly responsible for their maintenance (including repair by replacement where necessary) for the duration of this Contract.

## **PART 8      AUDIT, REVIEW AND CONTINUOUS IMPROVEMENT**

### **29.      Financial Reports**

29.1 The Contractor shall submit to the Authority Financial Reports in the form set out in Schedule 11 (Financial Reports) every three months from Service Commencement Date up until the earlier of the Expiry Date or the Termination Date.

29.1. The submission by the Contractor and receipt by the Authority of the Financial Reports shall not prejudice any of the rights of the Authority or the Contractor under this Contract.

### **30.      Performance Management**

30.1. The Parties shall comply with the provisions of Schedule 12 (Performance Mechanism).

30.2. The Contractor shall procure that the relevant provisions of Schedule 12 (Performance Mechanism) are flowed down to all Sub-Contractors and any other persons for whom it is responsible to enable the Contractor, its Sub-Contractors and any other persons for whom it is responsible to comply with the provisions of Schedule 12 (Performance Mechanism).

30.3. The Contractor shall provide the Authority's Representative with relevant particulars of any aspects of its performance which fail to meet the requirements of this Contract (unless otherwise notified in writing by the Authority) in accordance with Schedule 12 (Performance Mechanism).

30.4. The Authority may, at all reasonable times observe, inspect and satisfy itself as to the adequacy of the Contractor's monitoring of performance pursuant to Schedule 12 (Performance Mechanism) (including carrying out sample checks and any other auditing required).

### **31.      Continuous Improvement Review**

31.1. The Contractor shall, during the Contract Period, establish and implement a programme of measures which are designed to secure continuous improvement at no risk to or reduction in the quality of the Training Services delivered by the Contractor and measured under this Contract (the "Continuous Improvement Programme") whilst achieving cost reductions as set out in Schedule 14 (Continuous Improvement Plan).

31.2. The Continuous Improvement Programme, under which the Contractor shall submit substantive and deliverable proposals and recommendations in accordance with Schedule 4 (Change and Change Management), shall include, but not be limited to:

- a. the systematic assessment and implementation of proposals designed to secure Continuous Improvement and, where relevant, cost reductions;
- b. the systematic review of the Contractor's internal targets and revision to ensure consistency with contractual performance;
- c. the systematic gathering, review and use of feedback;
- d. the early identification of problems and opportunities, and measures to address them;

- e. effective business management;
- f. effective use of resources;
- g. appropriate incentivisation; and
- h. the development and training of Contractor Employees.

31.3. The Contractor shall report on the Continuous Improvement Programme in accordance with Schedule 14 (Continuous Improvement Plan).

31.4. The Authority's Representative may audit the Contractor's Continuous Improvement Programme (including the reports referred to in Clause 31.3) at approximate intervals of six months and may carry out other periodic monitoring, spot checks and auditing of the Contractor's Continuous Improvement Programme as it deems necessary, acting reasonably.

**32. Not Used**

**33. Not Used**

**34. Open Book Accounting and Auditing**

34.1. The Contractor shall operate Open Book Accounting in relation to this Contract as set out in this Clause 34.

34.2. The Contractor shall:

- a. provide to the Authority a Certified Cost Statement at the end of each Contract Year;
- b. deliver to the Authority, at the half yearly interval, a summary of costs and revenues relating to this Contract;
- c. provide to the Authority the annual accounting and audit of its costs and revenues relating to this Contract; and
- d. provide access to the Authority, on request, to the source data (including computerised records and data) of any information in relation to this Contract.

34.3. The Contractor shall prepare annually the following for delivery to the Authority:

- a. on or before 30th April, a Provisional Statement for the preceding Contract Year; and
- b. on or before 30th June, a Full and Final statement of Actual Costs and revenue relating to this Contract (a "Full and Final Statement") for the preceding Contract Year.
- c. Both the Provisional Statements and the Full and Final Statements shall be fully in support of, and compatible with, the operation of the Contract Price as calculated in accordance with Schedule 6 (Pricing Mechanism).

34.4. Any agreed adjustments to this Contract Price arising from the Provisional Statements and the Full and Final Statements will be made in accordance with Schedule 6 (Pricing Mechanism).

34.5. The Provisional Statements and the Full and Final Statements shall contain, without limitation and in accordance with the QMAC, details of:

- a. staff costs (including manning levels, salaries, overtime, and pension and NI contributions);
- b. equipment and material costs (including hardware depreciation, hardware lease, hardware maintenance, software licences and maintenance, telecommunications and supplies/sundries);
- c. other costs (including travel, training, temporary staff and Sub-Contract services);
- d. overheads; and
- e. revenue from all sources included in this Contract.

34.6. The Authority's Open Book Accounting rights shall extend to the Contractor's Parent Company and Group Companies only where such companies are single sourced Sub-Contractors to the Contractor under this Contract and only with respect to such accounting information directly related to such activities.

34.7. The Contractor shall ensure that all Sub-Contracts placed on a single source basis contain provisions which allow the Authority to have equivalent audit rights to those set out in this Clause 34 only with respect to accounting information directly related to such Sub-Contract activities.

34.8. The Contractor shall keep, or shall cause to be kept, full financial records and supporting information of all relevant Training Services provided pursuant to this Contract, including, but not limited to, materials and services provided, timesheet records, Sub-Contracts utilised, and charges levied.

34.9. The Contractor shall grant to the Authority, the statutory auditors of the Authority and their respective authorised agents (provided an appropriate confidentiality agreement has been concluded) the right of reasonable access to the financial books and records of the Contractor relating to this Contract, and shall provide all reasonable assistance at all times during the Contract Period for the purposes of:

- a. carrying out a financial audit of the Contractor's financial books and records.
- b. auditing reports provided by the Contractor in accordance with the Contract;
- c. verifying whether a cost of the Contractor is an Allowable Cost;
- d. verifying the reason for any difference between an estimated and actual Allowable Cost;
- e. verifying any other matter relating to the price payable under the Contract; and
- f. monitoring the Contractor's performance of its obligations under the Contract.

34.10. The Authority warrants to the Contractor that it, and its authorised agents and representatives shall respect and protect the confidentiality of all data and records



accessed during any audit carried out pursuant to this Clause 34. All such data and records shall be treated as Confidential Information for the purposes of Clause 60 (Disclosure of Information).

- 34.11. The Authority shall from time to time notify the Contractor of programmes of audits.
- 34.12. The appointed auditors may produce reports to the Authority indicating areas of non-compliance with this Contract and make recommendations.
- 34.13. Following each audit, the Authority shall produce a report of the audit to the Contractor indicating any areas of financial non-compliance with this Contract which the Contractor is required to rectify in accordance with this Clause 34.
- 34.14. The Authority shall ensure that the Contractor has the opportunity to review the factual issues relevant to the Contractor which are raised by the report in Clause 34.13 and to comment upon the recommendations contained therein and the Authority shall take such comments into consideration.
- 34.15. The Contractor shall, at its own expense, implement, within the timescales agreed by the Parties, any changes necessary to remedy areas of non-compliance with any of the terms in this Contract as identified by the Authority or its representatives, where such non-compliance results from a failure or inaction on the part of the Contractor.
- 34.16. The Contractor shall, on reasonable timescales specified by the Authority, provide evidence, either documentary or demonstrative, as required by the Authority, and shall, if required, provide access to the representatives of the Authority, to permit the Authority or its representatives, or the National Audit Office, to monitor and confirm the implementation of such agreed changes.
- 34.17. The Authority and the Contractor shall implement audit recommendations in accordance with the timescale and procedures agreed by the Parties.
- 34.18. For the purpose of the examination of the Authority's financial records, any examination pursuant to section 6(1) of the National Audit Act 1983 or any re-enactment of the efficiency or effectiveness with which the Authority has used its resources, the Comptroller and Auditor General may examine such documents which includes computerised records and data directly relating to this Contract as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to produce such oral or written explanations as he considers necessary.

### **35. Contractor's Records**

- 35.1. The Contractor shall maintain such records as are specified in this Contract and connected with the Contract (expressly or otherwise) and make them available to the Authority as the Authority may reasonably require when requested upon reasonable notice. Such records must be retained by the Contractor for at least four years after the end of the Contract Period.
- 35.2. The Contractor and its sub-contractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National

Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

- a. to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
- b. to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

35.3. Subject to the provisions of Clause 60 (Disclosure of Information) and Part 12 (Intellectual Property) the Contractor shall permit all records referred to in this Clause 35 to be examined and if necessary copied, by or on behalf of the Authority.

## **PART 9 BILLING AND PAYMENT**

### **36. Contract Price**

- 36.1. The Authority will pay to the Contractor the Contract Price. Details of the Contract Price are set out in Schedule 6 (Pricing Mechanism). Pricing of changes and amendments to this Contract shall be calculated in accordance with the provisions of Schedule 4 (Change and Change Management) and Schedule 7 (Future Pricing and Pricing of Change).
- 36.2. Should the Authority exercise its options to extend this Contract in accordance with the provisions of Clause 3 (Duration) and Schedule 15 (Options to Extend), the price of the extensions shall be as set out in Schedule 6 (Pricing Mechanism).
- 36.3. The Parties agree that, in respect of the Contract Price, all Allowable Costs associated with the performance of the Training Services and the Contractor's obligations under this Contract are deemed to be included in the Contract Price unless expressly stated otherwise within the Contract or it is otherwise agreed by the Parties or determined pursuant to Clause 88 (Dispute Resolution Procedure) that the activities, tasks, materials and/or services in respect of which Allowable Costs are sought by the Contractor are not necessary to deliver the Training Services and a change is agreed in accordance with Schedule 4 (Change and Change Management) to incorporate such tasks, activities, materials and/or services into the Training Services.
- 36.4. Subject to this Clause 36 and Schedule 4 (Change and Change Management), unless expressly stated to the contrary in this Contract, the Fixed Cost includes the costs of delivery of the Training Services as set out in Schedule 2 (Statement of Requirements) and the performance of the Contractor's obligations under this Contract.

### **37. Payment**

- 37.1. The Authority shall pay the Contractor the Contract Price in accordance with the terms of this Contract and Schedule 13 (Payment Mechanism).

### **38. Recovery of Sums Due**

- 38.1. Whenever under this Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under this Contract, or under any other contract with the Authority, or with any Government Department.

### **39. Disputed Amounts**

- 39.1. The Authority may withhold payment of any amount it believes the Contractor is not entitled to pursuant to this Contract ("Disputed Amount") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, subject to notifying the Contractor of such belief (and the reasons for it) on or before the day on which the Disputed Amount would (but for this Clause 39.1) otherwise fall due.
- 39.2. The Authority shall pay any undisputed amounts on or before the day on which they fall due.

39.3. Within five Business Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 39.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:

- a. to retain on a permanent basis any amounts withheld pursuant to Clause 39.1; and
- b. to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

39.4. If the Contractor responds pursuant to Clause 39.3 that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 39.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under Clause 88 (Dispute Resolution Procedure).

39.5. If the determination of any dispute conducted pursuant to Clause 39.4 shows that:

- a. the Authority has withheld any amount which the Contractor was entitled to be paid; or
- b. the Contractor has claimed under Clause 37 (Payment) any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over-payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

#### **40. VAT**

40.1. The Contract Price excludes any UK output VAT and any similar EU (or non-EU) taxes chargeable on the provision of the Training Services by the Contractor to the Authority.

40.2. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HMRC, the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the provision of the Training Services, and all other payments under this Contract according to the Law at the relevant tax point.

- 40.3. The Contractor is responsible for the determination of VAT liability. The Contractor shall seek its own independent tax advice or consult with HMRC (and not the Authority or the Authority's Representative) in cases of doubt. The Contractor shall notify the Authority's Nominated Commercial Officer of the Authority's VAT liability under the Contract, and any changes to it, within twenty business days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within 10 Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling, it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within 10 Business Days of receiving the decision.
- 40.4. Where the provision of the Training Services come within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the provision of the Training Services. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
- 40.5. Where the Training Services are deemed to be provided to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under this Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the provision of the Training Services within thirty calendar days of a written request for payment of any such sum by the Contractor.
- 40.6. In relation to the Training Services provided under this Contract, the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved under Clause 88 (Dispute Resolution Procedure) or some other form of dispute resolution as agreed between the Parties.
- 40.7. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 40.3 above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract and shall indemnify the Authority against any claim for interest or penalties made against the Authority by HMRC. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within 10 Business Days of a written request from the Authority for such correspondence.

## **PART 10 INSURANCE, INDEMNITIES AND LIABILITY**

### **41. Insurance**

- 41.1. Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 17 (Required Insurances) take out and maintain or procure the taking out and maintenance of the Insurances as set out under this Clause 41 and Schedule 17 (Required Insurances) and any other insurances as may be required by Law. The Contractor shall ensure that each of these Insurances is effective in each case not later than the date on which the relevant risk commences.
- 41.2. The Insurances shall be maintained from time to time (as far as is reasonably practicable) on terms no less favourable to those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 41.3. The Insurances shall be taken out and maintained with insurers who are of good financial standing, appropriately regulated and of good repute in the international insurance market.
- 41.4. The Contractor shall ensure in respect of each of the public and products liability, motor third party liability and employers liability insurances that:
- a. the policies of insurance shall contain an indemnity to principals Clause under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage and for which the Contractor is legally liable in the provision of the Training Services under this Contract; and
  - b. the policies of insurance contain a Clause waiving all rights of subrogation or action that insurers may acquire against the Authority, its employees, servants and agents. The provisions of this Clause 41.4b shall not apply against any Authority employee, servant or agent who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition.
  - c. The Contractor shall ensure in respect of the Property Damage “All Risks” Insurance the Authority shall be named as a co-insured party with attendant non visitation and waiver of subrogation protection.
- 41.5. Without limiting the other provisions of this Contract, the Contractor shall:
- a. take or procure the taking of all reasonable risk management and risk control measures in relation to the Training Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice including but not limited to the investigation and reporting of relevant claims to insurers;
  - b. promptly notify the insurers of any relevant material fact under any Insurances of which the Contractor is or becomes aware and discharge all its obligations under the Insurance Act 2015 when placing, renewing, amending or maintaining any insurance required by this Contract; and

- c. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a part and for which it is responsible under this Contract.
- 41.6. The Contractor shall not (and the Contractor shall procure that none of its Sub-Contractors of any tier shall not) take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 41.7. The Authority may elect (but shall not be obliged) where notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium, insurance premium tax and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 41.8. The Contractor shall from the date of this Contract and within 15 Business Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in full force and effect and meet in full the requirements of this Clause 41 and Schedule 17 (Required Insurances). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority, imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory or relieve the Contractor of its liabilities and obligations under this Contract.
- 41.9. The Contractor shall notify the Authority at least 10 Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 41.10. The Contractor shall promptly notify to insurers of any matter arising from, or in relation to, the Training Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to the Training Services or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 41.11. Except where the Authority is the claimant party, the Contractor shall give the Authority Notice within 10 Business Days after any insurance claim in excess of fifty thousand pounds (£50,000) relating to the provision of the Training Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 41.12. Where any Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 41.13. Where any Insurance referred to in this Clause 41 and Schedule 17 (Required Insurances) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

- 41.14. All insurance proceeds received under any policy referred to in Schedule 17 (Required Insurances) Property Damage "All Risks" Insurance or motor vehicle insurance shall be applied to repair and reinstate each part or parts of the subject matter of any policy and for which the insurances proceeds were received.

## **42. Indemnities**

- 42.1. The Contractor shall, subject to Clause 42.2, be responsible for, and shall release and indemnify the Authority, its employees and agents (and Authority Contractors on demand) from and against all liability for:

- a. death or personal injury;
- b. loss of or damage to Authority Property;
- c. breach of statutory duty and
- d. actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, a breach of this Contract, a tortious act or omission, a breach of statutory duty, fraud or wilful misconduct, or the performance or non-performance of its obligations under this Contract by the Contractor, a Sub-Contractor, their employees or agents.

### **Limits on Indemnity**

- 42.2. The Contractor shall not be responsible or be obliged to indemnify the Authority nor have any liability for:

- a. any of the matters referred to in Clauses 42.1a to 40.1d above which arises as a direct result of the Contractor acting on the instruction of the Authority; or
- b. any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority, its employees, agents or Authority Contractors or by the breach by the Authority of its obligations under this Contract.

- 42.3. An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

### **Conduct of Indemnity Claims**

- 42.4. If any claim is subject to an indemnity from either Party to the other:

- a. the Party wishing to make a claim (the "Indemnified Party") shall notify the other Party (the "Indemnifying Party") of the relevant claim as soon as reasonably practicable, giving full particulars of the claim;
- b. the Indemnified Party shall take all reasonable steps (and, if the Contractor is the Indemnified Party, it shall ensure that the Sub-Contractors shall take all reasonable steps) to minimise and mitigate any loss for which the Indemnifying Party is liable under this Contract; and
- c. if the claim relates to an action by a third party against the Indemnified Party, the Indemnifying Party may, unless the Contractor is the Indemnifying Party and the Authority notifies the Contractor that the



Authority is refusing to allow the Contractor to have conduct of the claim on grounds of national security, at its own expense (and with the assistance and co-operation of the Indemnified Party) have conduct of such claim, including its settlement, and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the claim.

#### Conduct of Indemnity Claims – Indemnifying Party's Obligations

42.5. If the Indemnifying Party wishes to have conduct of the claim it shall:

- a. reimburse the Indemnified Party for any cost or liability arising out of the conduct of the claim by the Indemnifying Party;
- b. keep the Indemnified Party reasonably informed of the conduct of the claim;
- c. consult with the Indemnified Party to the extent reasonably practicable;
- d. not compromise the claim in any way whatsoever by making statements or admissions (other than in accordance with the Indemnified Party's consent, not to be unreasonably withheld or delayed);
- e. do nothing which could prejudice the defence of any such claim; and
- f. not bring the name of the Indemnified Party into disrepute.

#### Repayment of Subsequently Recovered Amounts to Indemnifying Party

42.6. If the Indemnifying Party pays to the Indemnified Party an amount in respect of an indemnity and the Indemnified Party subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Indemnified Party shall immediately repay to the Indemnifying Party whichever is the lesser of:

- a. an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Indemnified Party in recovering the same; and
- b. the amount paid to the Indemnified Party by the Indemnifying Party in respect of the claim under the relevant indemnity,

provided that:

- (1) there shall be no obligation on the Indemnified Party to pursue such recovery; and
- (2) the Indemnifying Party shall be repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnified Party exceeds any loss sustained by the Indemnified Party.

#### Limitations on Claims

42.7. Neither Party will be liable to the other Party for:

- a. any indirect, special or consequential loss or damage; or

- b. any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

42.8. Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

#### Contractor's Liability

42.9. Save in respect of:

- a. claims which relate to a matter in respect of which the Contractor is required to maintain insurance pursuant to the terms of this Contract, in which case the limit of liability in respect of such matter shall be the maximum insured amount under the relevant policy of insurance; or
- b. the indemnities under Clause 50 (TUPE and Pension Matters). Schedule 16 (TUPE) and Part 12 (Intellectual Property) in respect of which liability shall be unlimited;

the Contractor's maximum total liability in each Contract Year shall be limited to an amount equal to 50 per cent of the Annual Maximum Price for the relevant Contract Year in respect of any and all claims or series of connected claims arising under or in connection with this Contract arising in that Contract Year. For the purposes of this Clause, a claim or series of connected claims shall be deemed to have arisen in the Contract Year in which the facts or circumstances giving rise to such claim or series of connected claims first occurred.

42.10. Nothing in this Contract shall be construed as excluding or limiting either Party's liability for death or personal injury resulting from that Party's negligence or for fraud or fraudulent misrepresentation.

42.11. The Parties shall use all reasonable endeavours to mitigate any losses it seeks to claim under this Clause 42.

#### Authority's Liability

42.12. Save in respect of the indemnities under Clause 480 (TUPE and Pension Matters). Measures in Crisis (Clause 86), Clause 98 (Data Protection), Schedule 16 (TUPE) and Part 12 (Intellectual Property) in respect of which liability shall be unlimited, the Authority's maximum total liability in each Contract Year shall be limited to an amount equal to 50 per cent of the Fixed Price for the relevant Contract Year in respect of any and all claims or series of connected claims arising under or in connection with this Contract arising in that Contract Year. For the purposes of this Clause, a claim or series of connected claims shall be deemed to have arisen in the Contract Year in which the facts or circumstances giving rise to such claim or series of connected claims first occurred.

## **PART 11 EMPLOYMENT MATTERS**

### **43. Non-Solicitation**

- 43.1. The Contractor undertakes that during the Contract Period, and for the period of six months after the end of the Contract Period, it shall not directly solicit or attempt to directly solicit services from any employees of the Authority or entice or attempt to entice any employees of the Authority away from the Authority.
- 43.2. In the event that the Contractor breaches Clause 43.1, it shall pay on demand liquidated damages to the Authority, the amount of liquidated damages being calculated in accordance with Clause 43.3.
- 43.3. The amount of liquidated damages payable by the Contractor to the Authority pursuant to Clause 43.2 shall be a sum equal to the gross salary of the relevant employee of the Authority for the 12 month period (or, if the employee of the Authority was employed for a period of less than 12 months, the gross salary for such lesser period) prior to the breach of Clause 43.1 by the Contractor. The Parties agree that the liquidated damages referred to in this Clause 43.3 are a genuine pre-estimate of loss that the Authority may suffer as a result of such breach.

### **44. Equality**

- 44.1. The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 44.2. Without prejudice to the generality of the obligation in Clause 44.1, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.
- 44.3. The Contractor shall take reasonable efforts to secure the observance of the provisions of this Clause 44 by any of its employees, agents or other persons acting under its direction or control or any Sub-Contractors engaged in the performance of this Contract.
- 44.4. The Contractor shall incorporate the terms of this Clause 44 in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 44 in any further sub-contracts that they enter into to satisfy the requirements of this Contract.

### **45. Employee Relations**

- 45.1. During the Implementation Phase, the Contractor shall engage and consult with the previous Contractor Employees and their relevant representatives in accordance with the Implementation Plan contained in Schedule 5 (Transition Plans).

### **46. Use of Authority Personnel**

- 46.1. During the Contract Period, subject to Clause 46.3 below the Authority may, at its absolute discretion, make available GFR to the Contractor.

- 46.2. The Contractor shall be responsible for the management of the GFR in order to provide the Training Services in accordance with the terms of this Contract.
- 46.3. The Authority shall have the right at any time upon giving the Contractor such reasonable notice as may be appropriate in all the circumstances to require the GFR for duties unconnected with this Contract.
- 46.4. The Authority shall, where possible, provide replacement GFR to replace those which it has removed pursuant to Clause 46.3 above. Where the Authority is unable to provide any replacements, the Contractor shall be responsible for recruiting additional staff to ensure that it can meet the requirements of this Contract in accordance with Schedule 4 (Change and Change Management).
- 46.5. Where the Contractor is required to recruit staff pursuant to Clause 46.4 above, the Contractor shall seek agreement from the Authority to any Contractor Management Plans for replacing the GFR and any associated costs prior to incurring such associated costs.
- 46.6. The Authority shall not be liable to the Contractor for the acts or omissions of the GFR to the extent that the GFR acts on the instructions of the Contractor.

#### **47. Redundancy**

- 47.1. The Parties shall comply with their respective redundancy related obligations set out in Annex B to Schedule 16 (TUPE).

#### **48. TUPE and Pension Matters**

- 48.1. The Parties shall comply with their respective employment and pensions related obligations set out in Schedule 16 (TUPE).
- 48.2. In the event that, pursuant to the Contract, there is a transfer of employment of an individual(s) either to or from the Contractor or its Sub-Contractors in accordance with TUPE, the Parties shall agree any necessary amendments to the terms of Schedule 16 (TUPE) to reflect the specific circumstances applying to the individual(s) so transferring.
- 48.3. All Sub-contracts which may result in the employment of any Ex-Authority Employee being transferred to a Sub-contractor pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 shall include those provisions required under Clause 1.2 of Schedule 16 (TUPE) of this Contract in respect of such Sub-contracts.

## **PART 12 INTELLECTUAL PROPERTY**

### **49. Intellectual Property Rights – Vested in the Authority**

- 49.1. All intellectual property rights of any nature in the results generated in the performance of work under the Contract and recorded in any written or other tangible form (the 'Results'), including rights in inventions, designs, computer software, databases, copyright works and information shall vest in and be the property of the Authority. The Contractor shall take all necessary measures to secure that vesting. On request, the Contractor shall demonstrate to the Authority's satisfaction that, where it has sub-contracted work under the Contract, it has secured that vesting in the work performed by its sub-contractors.
- 49.2. The Authority may use, have used, copy and disclose the Results by itself or through third parties for any purpose whatsoever subject to the Contractor's patents and design rights (registered or unregistered) and to the rights of third parties not employed in the performance of work under the Contract.
- 49.3. The Authority shall determine whether any of the Results should be protected by patent or other protection. The costs of patent or like protection shall be borne by the Authority. The Contractor shall assist the Authority in filing and executing documents necessary to secure that protection. The Contractor shall use all commercially reasonable endeavours to secure similar assistance from subcontractors as appropriate. The costs of such patent or other protection shall be borne by the Authority.
- 49.4. The Contractor shall mark any copyright work comprising Results with the legend: 'UK Ministry of Defence © Crown owned copyright (year of creation or publication if available)'
- 49.5. Apart from intellectual property rights vested in the Authority by virtue of Clause 49.1, ownership of, or rights in, all other intellectual property are not transferred to the Authority by this Clause 49.
- 49.6. Unless otherwise agreed with the Authority, the Contractor shall retain a copy of the Results together with records of all work done for the purposes of the Contract for six years after the completion of the Contract.
- 49.7. The Authority shall have the right to require the Contractor to furnish to the Authority copies of any and all of the Results and such records for so long as they are retained by the Contractor. A reasonable charge for this service based on the cost of providing it will be borne by the Authority unless already included in the price of the Contract.
- 49.8. The Contractor shall treat the Results as if received in confidence from the Authority Clause and:
- a. shall not copy, use or disclose to a third party any of the Results without the prior written consent of the Authority, except that the Contractor may without prior consent, copy and use the Results, and disclose the Results in confidence to its officers, employees and sub-contractors, to such extent as may be necessary for the performance of the Contract or any sub-contract under it or in the exercise of any right granted pursuant to Clause 49.12 of this Condition; and

- b. shall take all reasonable precautions necessary to ensure that the Results are treated in confidence by those of its officers, employees and Sub-Contractors who receive them and are not further disclosed 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.

49.9. The Contractor shall ensure that their employees are aware of these arrangements for discharging the obligations at Clause 49.8 and take such steps as may be reasonably practical to enforce such arrangements

49.10. The confidentiality provisions of Clause 49.8 shall not apply to the Results or any part thereof to the extent that the Contractor can show that they were or have become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties.

49.11. The Contractor shall not be in breach of the confidentiality obligations contained in this Clause 49 where it can show that any disclosure of the Results was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Contractor shall ensure that the recipient of the Results is made aware of and asked to respect its confidentiality and, wherever possible and permitted by law, shall notify the Authority as soon as practicable after becoming aware that such disclosure is required. Such disclosure shall in no way diminish the obligations of the Contractor under this Clause 49.

49.12. The Contractor shall be entitled to request consent from the Authority to re-use (under licence or otherwise) the Results and intellectual property rights vested in the Authority by virtue of Clause 49.1 for other purposes including, but not limited to, tendering for other work for the Authority or work for another UK Government department. Such consent shall be properly considered by the Authority taking into account matters such as national security and the rights of third parties.

## **50. Foreground Intellectual Property**

50.1. Clause 49 (Intellectual Property Rights – Vested in the Authority) shall apply to all the Results relating to Foreground Intellectual Property under this Contract, unless prior to commencement of a specific Task, or change in accordance with Schedule 4, the Parties agree in writing that the Contractor shall own any Foreground Intellectual Property arising from that Task, or change in accordance with Schedule 4. To the extent that any Foreground Intellectual Property shall be owned by the Contractor, the Authority shall be entitled to the rights in such Foreground Intellectual Property as set out in Clause 50.3. In the event that any Task, or change in accordance with Schedule 4, involves the prospect of the joint development of Intellectual Property, the Parties shall agree a disposition of the Intellectual Property to be created which takes account of the dependency on any Background Intellectual Property owned by Authority and/or the Contractor, but the absence of any such agreement shall not be construed as meaning anything other than Authority ownership of the Foreground Intellectual Property.

### **Licensing of Foreground Intellectual Property**

50.2. The Authority grants to the Contractor a non-exclusive, royalty free, licence to utilise the Authority-owned Foreground Intellectual Property for the sole purpose of the Contractor performing its obligations under this Contract. Subject to compliance

with Clause 60 (Disclosure of Information) and Clauses 51.13 to 51.15 below, the Contractor may sub-licence, on the same terms, the Authority owned Foreground Intellectual Property to such Sub-Contractors as may require use of the Foreground Intellectual Property solely for the purposes of performing their Sub-Contract obligations.

- 50.3. In the event that the Contractor and Authority shall have agreed that the Foreground Intellectual Property shall be owned by the Contractor, the Contractor shall grant to the Authority a perpetual, royalty free, non-exclusive, worldwide licence to copy, modify and use such Contractor owned Foreground Intellectual Property and have all such activities performed by third parties on behalf of the Authority for any United Kingdom Government purpose whatsoever.

#### Commercial Exploitation of Foreground Intellectual Property

- 50.4. The Contractor shall not commercially exploit any Contractor owned Foreground Intellectual Property without first agreeing with the Authority the sum or sums which shall be paid to the Authority and subject also to the Contractor obtaining any further consent as may be required in respect of security and export licences. To the extent that it is required to facilitate commercial exploitation of the Contractor owned Foreground Intellectual Property, the Authority shall give consideration to granting a licence in respect of the Authority owned Foreground Intellectual Property and any relevant Background Intellectual Property owned by the Authority. Additionally, such licence to exploit Authority owned Foreground Intellectual Property and relevant Background Intellectual Property owned by the Authority shall be subject to any required security approvals and export licences. The obtaining of any required approvals outside the control of the Authority shall be the responsibility of the Contractor.

### **51. Background Intellectual Property**

#### Authority Owned Background Intellectual Property

- 51.1. To the extent that it is able, and without incurring liability to any third party, the Authority grants to the Contractor a royalty free, non-exclusive licence to use Authority owned Background Intellectual Property for the purposes of the Contractor performing this Contract. Unless the Authority shall specify to the contrary, the Contractor shall be entitled to sub-licence its Sub-Contractors to use the Authority owned Background Intellectual Property solely for performance of Sub-Contracts.

#### Contractor Owned Background Intellectual Property

- 51.2. Where the Contractor utilises Contractor owned Background Intellectual Property for the purposes of performing this Contract, the Contractor shall grant the Authority a perpetual, royalty free, non-exclusive licence to use, and have third parties use, on behalf of the Authority, such Contractor-owned Background Intellectual Property for the purposes of this Contract, including the delivery of Government to Government Training and such licence shall extend on the same terms and to the same purposes being performed after the Expiry Date or the Termination Date.

#### Authority Supplied Third Party Owned Background Intellectual Property

- 51.3. To the extent that the Authority has sufficient rights to enable use by the Contractor for the purposes of this Contract, the Authority shall grant a royalty free, non-exclusive licence to the Contractor to use Authority supplied third party owned

Background Intellectual Property in accordance with any restrictions notified by the Authority. The Contractor shall not sub-licence such Authority supplied third party owned Background Intellectual Property without first obtaining the written consent of the Authority. Where any such sub-licence is granted, its use shall be solely for the purposes of performing Sub-Contract obligations and subject to such constraints as may be notified by the Authority, but which sub-licence shall not be of broader scope than that granted to the Contractor.

#### Contractor Supplied Third Party Owned Background Intellectual Property

51.4. Where the Contractor utilises third party owned Background Intellectual Property for the purposes of this Contract, the Contractor shall ensure that:

- a. the Authority has a free right to use such third party owned Background Intellectual Property for the same purposes as it is employed under this Contract, including the delivery of Government to Government Training;
- b. the Contractor shall endeavour to ensure that such third party owned Background Intellectual Property is available for use by third parties for the same purposes as it is employed under this Contract, and that the Contractor shall notify the Authority of any issue of non-compliance prior to utilising the relevant third party owned Background Intellectual Property for this Contract and await instruction from the Authority;
- c. all third party owned Background Intellectual Property licences shall be perpetual unless the Authority agrees otherwise;
- d. all third party owned Background Intellectual Property licence shall be royalty free unless the Authority agrees otherwise; and
- e. the Authority is supplied within 20 days with copies of any agreed third party owned Background Intellectual Property licences and the Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs arising from a failure by the Contractor to comply with this Clause 51.4.
- f. Any variation to the above provisions of this Clause 51 may be considered by the Authority on a case by case basis at its absolute and sole discretion and, where the Authority agrees any such variation of rights, this will be subject to a formal Contract Amendment.

#### Notification and Marking

51.5. The Contractor shall mark any copyright work delivered under the Contract with a copyright notice consistent with the requirements of Clause 49.4 or as appropriate, such notice as may be relevant to specify the Contractor as owner of the work provided that in the latter case the copyright notice acknowledges the Authority's rights of use of such work under this Part 12 (Intellectual Property). Any such notice shall be perpetuated in any copies of such work made by the Contractor, the Authority or any other Government Department or its agents or contractors.

51.6. The Contractor shall ensure that any Background Intellectual Property which it utilises for this Contract is, to the extent practicable, marked as such and delivered where reasonable to do so, independently of Foreground Intellectual Property. Where the Contractor provides any Training Service under this Contract which



mixes Foreground Intellectual Property and Background Intellectual Property, it shall, at the request of the Authority, provide a justification for the mixing and at the reasonable request of the Authority, at no additional cost, shall provide these as separate Training Services.

#### Data Retention

- 51.7. During the Contract Period and for not less than six years after, the Contractor shall maintain at least one copy (the "Control Copy") of all Information.
- 51.8. The Control Copy shall be maintained in media and formats agreed to by the Authority but in any event be presented in a logical format which readily facilitates third party understanding of the Control Copy and association as appropriate with its relevant equipment. Where the Information contained in the Control Copy is Information owned by the Authority, the Authority may take possession of the Control Copy notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party, and copies of the Control Copy shall be supplied by the Contractor as required by the Authority from time to time at the Authority's reasonable expense. Where the Authority has a right of access to any Information contained in the Control Copy pursuant to this Contract, the Authority may request access to such Control Copy pursuant to and in accordance with its rights under this Contract.
- 51.9. If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, then the Contractor's obligations under Clauses 51.7 to 51.9 shall be governed by that contract at the end of the period referred to in Clause 51.7. The Contractor shall not destroy or amend the Control Copy except as authorised in writing by the Authority.

#### Sub-Contracting

- 51.10. The Contractor shall not place any Sub-Contract which involves any element of design and development of Intellectual Property without ensuring that the Intellectual Property rights of the Authority are consistent with this Contract. Where appropriate, the Contractor shall invite the Authority to enter into a direct agreement with any prospective Sub-Contractor to ensure the Authority's rights of use in any Foreground Intellectual Property.

#### Continuity of Use

- 51.11. Recognising that the Authority may require continuity of anything utilised or delivered under this Contract, the Contractor shall at all times act in a manner so as to ensure that the Authority can, in the most cost effective way to the Authority, continue to utilise the Training Documentation provided by the Contractor under this Contract. In this respect, the Contractor shall immediately consult with the Authority in respect of any third party Background Intellectual Property licences required during the performance of this Contract which contain restrictions on use, price or otherwise and which restrictions would constrain or prevent the Authority, or a third party on behalf of the Authority, from continuing to utilise that Background Intellectual Property for the same purposes as which it was utilised under this Contract.
- 51.12. The Contractor shall, if requested, and on fair and reasonable terms, make reasonable endeavours to grant to the Authority, or third parties on behalf of the

Authority, licences in Contractor owned Background Intellectual Property for which licences are for purposes beyond those for which the Background Intellectual Property was utilised or granted under this Contract. At the request of the Authority the Contractor shall endeavour to obtain, on fair and reasonable terms, licences for the Authority, or third parties on behalf of the Authority, in Contractor supplied third party owned Background Intellectual Property for purposes beyond those for which the Background Intellectual Property was utilised or granted under this Contract.

#### Controlled Information

51.13. Clauses 49.11 to 49.13 shall apply in addition to and notwithstanding Clause 60 (Disclosure of Information) or any other confidentiality Clause in this Contract.

51.14. The Contractor shall:

- a. hold the Controlled Information and not to use it other than for the purpose of discharging its obligations under this Contract;
- b. not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;
- c. not disclose the Controlled Information to any third party without the prior written consent of the Authority;
- d. protect the Controlled Information diligently against any unauthorised access and against loss;
- e. act diligently to ensure that:
  - (1) Controlled Information is disclosed to Contractor Employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and
  - (2) Contractor Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Clause 51.14;
- f. compile a Register of Controlled Information (the "Register of Controlled Information"), which shall include an explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;
- g. maintain the Register of Controlled Information for the Contract Period and for two years afterwards;
- h. make the Register of Controlled Information available to the Authority upon reasonable notice for inspection and audit for the Contract Period and for two years thereafter; and,
- i. after the Contract Period, return to the Authority all original and duplicate copies of the Controlled Information, or if requested by the Authority, destroy the Controlled Information and provide a certificate of destruction to the Authority.

51.15. Clauses 51.11 and 51.12 shall not diminish or extinguish any right of the Contractor to copy, use or disclose any other Information to the extent that it can show:

- a. that the Information concerned was or has become published or publicly available for use without breach of any provision of the Contract or any other agreement between the Parties;
- b. that the Information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;
- c. that the Information concerned was lawfully provided by a third party without restriction on use or further disclosure; or
- d. from its records, that the Information was derived independently of the Controlled Information,

to the extent that copying, use or disclosure of this other information shall not disclose its relationship to any Controlled Information.

## **52. Third Party Intellectual Property – Commercial and Non-Commercial Articles and Services**

### **Notifications**

52.1. As it becomes aware, the Contractor shall promptly notify the Authority of:

- a. any invention or design the subject of patent or registered Design Rights (or application therefor) owned by a third party which appears to be relevant to the performance of this Contract or to use by the Authority of anything required to be done or delivered under this Contract;
- b. any restriction as to disclosure or use or obligation to make payments in respect of any other Intellectual Property (including technical information) required for the purposes of this Contract or subsequent use by the Authority of anything delivered under this Contract and, where appropriate, the notification shall include such information as is required by section 2 of the Defence Contracts Act 1958;
- c. any allegation of infringement of Intellectual Property Rights made against the Contractor and which pertains to the performance of this Contract or subsequent use by the Authority of anything required to be done or delivered under this Contract.

This Clause 52.1 does not apply in respect of articles or services normally available from the Contractor as a commercial off the shelf ("COTS") item or service.

52.2. If the information required under Clause 52.1 has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

### **Patents and Registered Designs in the UK – COTS Articles or Services**

52.3. In respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or supply under this Contract of any article or service normally available from the Contractor as a COTS item or service is an infringement of a United Kingdom patent or registered design not owned or

controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Clause will not apply if:

- a. the Authority has made or makes an admission of any sort relevant to such question;
- b. the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- c. the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under section 55 of the Patents Act 1977 or section 12 of the Registered Designs Act 1977;
- d. legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

52.4. The indemnity in Clause 52.3 does not extend to use by the Authority of anything supplied under this Contract where that use was not reasonably foreseeable at the time of this Contract.

52.5. In the event that the Authority has entered into negotiations in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with sections 55 and 56 of the Patents Act 1977 or section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

#### Patents and Registered Designs in the UK - All other Articles or Services

52.6. If a relevant invention or design has been notified to the Authority by the Contractor prior to the date of this Contract, then, unless it has been otherwise agreed under the provisions of sections 55 and 56 of the Patents Act 1977 or section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a patent or registered design, for the purpose of performing this Contract.

52.7. If, under Clause 52.1, a relevant invention or design is notified to the Authority by the Contractor after the date of this Contract, then:

- a. if the owner (or its exclusive licensee) takes, or threatens in writing to take, any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of sections 55 and 56 of the Patents Act 1977 or section 12 of the Registered Designs Act 1949; and
- b. in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of

sections 55 and 56 of the Patents Act 1977 or section 12 of the Registered Designs Act 1949.

#### Patents, Utility Models and Registered Designs outside the UK

- 52.8. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's Costs, as a result of infringement by the Contractor or its suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of this Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in this Contract or using, keeping or disposing of any item given by the Authority for the purpose of this Contract in accordance with this Contract.
- 52.9. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or its suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of this Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in this Contract or using, keeping or disposing of any item given by the Authority for the purpose of this Contract in accordance with this Contract.

#### Royalties and Other Licence Fees

- 52.10. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under this Contract, where:
- a. a relevant discharge has been given under section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with sections 55 or 57 of the Patents Act 1977, section 12 of the Registered Designs Act 1949 or section 240 of the Copyright, Designs and Patents Act 1988 in respect of any Intellectual Property; or
  - b. any obligation to make payments for Intellectual Property has not been promptly notified to the Authority under Clause 52.1.
- 52.11. Where an authorisation is given by the Authority under Clauses 52.5 to 52.7, to the extent permitted by section 57 of the Patents Act 1977, section 12 of the Registered Designs Act 1949 or section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
- a. released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing this Contract; and
  - b. authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

#### Copyright, Design Rights etc.

- 52.12. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

- a. infringement or alleged infringement by the Contractor or its suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item to be supplied under this Contract or otherwise in the performance of this Contract;
- b. misuse of any Confidential Information, trade secret or the like by the Contractor in performing this Contract; or
- c. provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of this Contract.

52.13. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

- a. infringement or alleged infringement by the Contractor or its suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of this Contract but only to the extent that the item is properly used for solely the purpose of this Contract; or
- b. alleged misuse of any Confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of this Contract, but only to the extent that the Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.

#### Authorisation and Indemnity - General

52.14. The above represents the total liability of each Party to the other under this Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right owned by a third party.

52.15. Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other Intellectual Property Right owned by a third party.

52.16. Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Clause 52 by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.

52.17. The Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise and shall provide such information as the other Party may reasonably require.

52.18. Following a notification under Clause 52.16, the Party notified shall advise the other Party in writing within 30 days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made, or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party.

- 52.19. The Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- 52.20. If at any time a claim or allegation of infringement arises in respect of copyright, database right, design right or breach of confidence as a result of the provision of any item by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach.
- 52.21. The Parties shall co-operate with one another to mitigate any claim or damage which may arise from use of third party Intellectual Property Rights.

#### Sub-Contracts

- 52.22. The Contractor shall secure from any Sub-Contractor, the prompt notification to the Authority of the information required by Clause 52.1. On receipt of any such notification the Authority shall issue a written authorisation to the Sub-Contractor in accordance with Clause 52.7. Any such authorisation will be subject always to Clauses 52.10, 52.11 and 52.14 as though the Sub-Contractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and Sub-Contractor to enable the Contractor to underwrite its indemnities to the Authority under this Clause 52 is a matter between the Contractor and the Sub-Contractor.

#### General

- 52.23. Nothing in this Part 12 shall be taken as an authorisation or promise of an authorisation under section 240 of the Copyright, Designs and Patents Act 1988. This Part 12 shall constitute "an agreement to the contrary" for the purposes of section 48 of the Copyright, Designs and Patents Act 1988.

#### Authorisation By The Crown For Use Of Third Party Intellectual Property Rights

- 52.24. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any Task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved."

### **53. Retention of Rights**

- 53.1. Nothing in this Contract shall extinguish or diminish any rights to use Intellectual Property which has been acquired by either the Authority or the Contractor outside of this Contract.

### **54. Transfer**

- 54.1. The Intellectual Property licences granted under this Contract shall not be assigned without the prior written permission of the licensor.

## **PART 13 SECURITY AND CONFIDENTIALITY**

### **55. The Official Secrets Acts**

55.1. The Contractor shall:

- a. take all reasonable steps to ensure that all Contractor Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 as amended, varied or modified shall apply to them and will continue so to apply after the Expiry Date or the Termination Date; and
- b. if directed by the Authority, ensure that any Contractor Employee shall sign a statement acknowledging that, both during the Contract Period and after its Expiry Date or the Termination Date, he is bound by the Official Secrets Acts 1911-1989 (including any further amendment, addition or variation and where applicable by any other Legislation).

### **56. Security Requirements**

- 56.1. The Contractor acknowledges that the Commanding Officer for each Establishment is responsible for all security on that Establishment. For the avoidance of doubt, this shall include personnel security, physical security and IT security. The Commanding Officer may delegate any part of its security responsibilities to the relevant Establishment Security Officer ("ESyO").
- 56.2. The Contractor agrees to be bound by any orders and directions issued by or on behalf of the Commanding Office or the ESyO and shall procure that any Sub Contractor also abides by such orders and direction absolutely.
- 56.3. The Contractor shall provide the name of the Contractor Security Officer to the Authority. The Contractor's Security Officer and the ESyO shall liaise in relation to relevant Establishment security matters.
- 56.4. The security requirements set out in this Clause 56 shall apply to the Contractor, Contractor Employees any Sub-Contractor, Sub-Contractor Employees, agent and representative authorised to act on behalf of the Contractor or the Sub-Contractor. For the avoidance of doubt, the Contractor is not relieved from any obligation contained in this Contract as a result of a breach of this Clause 56.

#### **Personnel Security**

- 56.5. The Contractor shall ensure that all the Contractor employees (including Sub-Contractors, Sub-Contractor Employees, agents and representatives of the Contractor or the Sub-Contractor) delivering Training Services under this Contract have clearances in place which are satisfactory to the Authority, the Commanding Officer and the ESyO.
- 56.6. The Contractor must obtain a Baseline Personnel Security Standard for each Contractor Employee (including Sub-Contractors, Sub-Contractor Employees, agents and representatives of the Contractor or the Sub-Contractor) and provide verification to the Authority that such persons have passed such security check. Information on the Baseline Personnel Security Standard is contained in the Cabinet Office document "HMG Baseline Personnel Security Standard" (available on the website [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)). Schedule 18 (Security Clearance) contains a sample proforma of verification to be provided by the Contractor to the



Authority for each Contractor Employee. For the avoidance of doubt, security clearance received by way of any other contract with any Government Department or via the Contractor's List X Status does not remove or alter any of the obligations on the Contractor under this Clause 56.

- 56.7. In the event that the Authority requires any Contractor Employee, Sub-Contractor, Sub-Contractor Employees, or agent and representative of the Contractor or the Sub-Contractor to have clearances additional to the Baseline Personnel Security Standard, the Contractor shall co-operate, and shall ensure that the Contractor employees, Sub-Contractor Employees, agent and representatives of the Contractor or the Sub-Contractor fully co-operate with the Authority to enable such additional clearances to be obtained.

#### Physical Security

- 56.8. The Contractor shall ensure that all Contractor employees abide by the physical security requirements of each Commanding Officer, as shall be notified to it from time to time.

#### IT Security

- 56.9. The Contractor shall ensure that all Contractor employees shall abide by the IT security requirements of each Commanding Officer, as shall be notified to it from time to time.

### **57. Declaration of Convictions – Working with Children and Vulnerable Adults**

- 57.1. The Contractor shall (to the extent permitted by Law) procure that all Contractor Employees or persons performing any Training Services under this Contract who may reasonably be expected in the course of their employment or engagement to have access to children or vulnerable adults shall before he or she begins to attend the Establishments:

- a. be questioned concerning their convictions; and
- b. only in the case of Contractor Employees or persons performing any Training Services under this Contract who may reasonably be expected in the course of their employment to have access to children or vulnerable adults, be required to complete a police check form or to consent to an application for a certificate under Part V of the Police Act 1997.

- 57.2. The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following completion of a police check or an application for a certificate under Clause 57.1 above, in either case of which the Contractor or its Sub-Contractor is aware or ought to be aware, is employed without the Authority's prior express written consent.

- 57.3. The Contractor shall procure that the Authority is kept advised at all times of any person employed or engaged by the Contractor or any Sub-Contractor in the performance of any of the work under this Contract who, subsequent to commencement of such employment or engagement, receives a conviction of which the Contractor or its Sub-Contractor becomes aware or whose previous convictions become known to the Contractor or a Sub-Contractor and provided that the Authority considers the conviction has a material bearing on the suitability of any such person to be engaged in performing any of the work under this Contract, such

person shall only continue to have access to the children and vulnerable adults, for the purpose of providing the relevant Training Services, with the Authority's prior written consent.

57.4. The Contractor shall comply with the provisions of JSP 893.

## **58. Security Measures**

58.1. Unless it has the written authorisation of the Authority to do otherwise, neither the Contractor nor any of the Contractor Employees shall, either before or after the Expiry Date or the Termination Date, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to, or acquired by, a person in any of the following categories:

- a. who is not a British citizen;
- b. who does not hold the appropriate authority for access to the protected matter;
- c. in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to, or acquired by, that person;
- d. who is not a Contractor Employee; or
- e. who is a Contractor Employee and has no need to know the information for the proper performance of this Contract.

58.2. Unless it has the written permission of the Authority to do otherwise, the Contractor and the Contractor employees shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure that:

- a. no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and
- b. any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework and upon request, is delivered up to the Authority who shall be entitled to retain it; and
- c. any Sub-Contractor is also taking appropriate measures to comply with sub- Clause 52.8a. and sub – Clause 52.8b. above with its Sub-Contractor Employees, representatives and agents.

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

58.3. The Contractor shall:

- a. provide to the Authority:
  - (1) upon request, such records giving particulars of those Contractor Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with sub-Clause 58.2b;
  - (2) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and the Contractor Employees are complying with its obligations under this Clause 58,

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

- (3) full particulars of any failure by the Contractor and the Contractor Employees to comply with any obligations relating to Secret Matter arising under this Clause 58 immediately upon such failure becoming apparent; and
- b. ensure that, for the purpose of checking the Contractor's compliance with the obligation in sub-Clause 58.2b, an authorised representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as it may reasonably require.

58.4. The Contractor shall ensure that all Contractor Employees are aware of its obligations in this Clause and have notice that the provisions of the Official Secrets Acts 1911 - 1989 and National Security Act 2023 as amended, varied or modified shall apply to them and will continue to apply after expiry or termination of this Contract before he or she begins to attend the Establishments.

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

58.6. The Contractor shall protect all Information relating to the aspects designated as OFFICIAL and OFFICIAL-SENSITIVE as identified in the security aspects at Schedule 20 to the Contract, in accordance with the official security conditions annexed to the security aspects letter.

58.7. The Contractor shall ensure that the requirements and obligations set out under paragraph 58.6 above are flowed down to their sub-contractors.

#### Subcontracts

58.8. If the Contractor proposes to enter into a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:

- a. submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;
- b. incorporate into the sub-contract the terms of the Schedule 35 Security Measures: Provisions To Be Included In Relevant Sub-Contracts and such secrecy and security obligations as the Authority shall direct. In the Schedule 35 "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub-Contractor"; and
- c. inform the Authority immediately if it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

58.9. For the avoidance of doubt, there is no requirement for List X Status under this Contract.

#### Termination

58.10. The Authority shall be entitled to terminate the Contract immediately if:

- a. the Contractor is in breach of any obligation under this Part 13; or
- b. the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter.

#### 59. Observance Of Regulations

59.1. The Contractor shall ensure that its employees, Sub-Contractors, agents or consultants have the necessary probity (by undertaking the Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.

59.2. Where the Contractor requires information on the Baseline Personnel Security Standard or security clearance for its employees, Sub-Contractors, agents or consultants or is not in possession of the relevant rules, regulations or requires guidance on them, it shall apply in the first instance to the Authority's Representative.

59.3. On request, the Contractor shall be able to demonstrate to the Authority that the Contractor's processes comply with the Baseline Personnel Security Standard have been carried out satisfactorily. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Baseline Personnel Security Standard.

59.4. The Contractor shall comply and shall ensure that its employees, Sub-Contractors, agents or consultants comply with the rules, regulations and requirements that are in force whilst at that Government Establishment which shall be provided by the Authority on request.

59.5. 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.

#### 60. Disclosure of Information

60.1. Subject to Clauses 60.4, 60.5 and 60.6 each Party:

- a. shall treat in confidence all Confidential Information it receives from the other;
- b. shall not disclose any of that Confidential Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Confidential Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract provided that such persons enter into a formal agreement that

it will treat all Confidential Information in confidence on terms no less stringent than the terms set out in this Contract;

- c. shall not use any of that Confidential Information otherwise than for the purpose of this Contract; and
- d. shall not copy any of that Confidential Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.

60.2. The Contractor shall take all reasonable precautions necessary to ensure that all Confidential Information disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract:

- a. is disclosed to its employees and Sub-Contractors, only to the extent necessary for the performance of this Contract; and
- b. is treated in confidence by them and 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 this Contract or any Sub-Contract under it.

60.3. The Contractor shall ensure that its employees are aware of its arrangements for discharging the obligations at Clauses 60.1 and 60.2 before they receive Confidential Information and take such steps as may be reasonably practical to enforce such arrangements.

60.4. Clauses 60.1 and 60.2 shall not apply to any Confidential Information to the extent that either Party:

- a. exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;
- b. has the right to use or disclose the Confidential Information in accordance with other conditions of this Contract; or
- c. can show:
  - (1) that the Confidential Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties;
  - (2) 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 this Contract;
  - (3) that the Confidential Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure; or
  - (4) from its records that the same information was derived independently of that received under or in connection with this Contract,

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

60.5. Neither Party shall be in breach of the provisions of Clause 60 where it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall use its best endeavours to protect the confidentiality of the Confidential Information and to procure that the recipient protects the confidentiality of the Confidential Information. Such disclosure shall in no way diminish the obligations of the Parties under Clause 60.

60.6. Subject to Clause 112, the Authority may disclose the Information:

- a. on a confidential basis to any Government Department for any proper purpose of the Authority or of the relevant Government Department, 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;
- 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 or other person engaged by any of the entities defined in DEFCON 501 (including benchmarking organisation) 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 the Contract; or
- f. on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;
- g. in accordance with Clause 112

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 the provisions of Clause 60.

60.7. Before sharing any Information in accordance with Clause 60.6 above, the Authority may redact the Information. Any decision to redact information made by the Authority shall be final.

60.8. The Authority shall not be in breach of this Contract where it can show that any disclosure of Confidential Information is made solely, and to the extent necessary, to comply with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. To the extent permitted by the time for compliance under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the Authority shall consult the Contractor where the Authority is considering the disclosure of Confidential Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and, in any event, shall provide prior notification to the Contractor of any decision to

disclose the Confidential Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Confidential Information in order to comply with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. For the avoidance of doubt, nothing in this Clause 60 shall affect the Contractor's rights at law.

60.9. The following illustrates, without limitation, the types of Information that the Authority considers reasonably must be held in confidence i.e. where the specific information has the necessary quality of confidence or may be commercially sensitive:

- a. Routine information of a private nature that would be expected to be kept private, including general correspondence that includes private company information or representation, proposals, responses to enquiries;
- b. Information whose unauthorised access or disclosure would cause significant harm to the interests of the owner / author. This would normally inflict harm by virtue of financial loss; loss of profitability or opportunity; or loss of reputation. The information may include but is not limited to:
  - (1) information on applications for grants, launch aid and loans for research, technology and product development;
  - (2) estimating, costing and pricing information, including unit prices and price breakdown information, discounts and price breaks;
  - (3) technology strategy and key technologies for future exploitation;
  - (4) research methodologies, tools and results;
  - (5) product design and engineering records;
  - (6) product design and production test and evaluation results;
  - (7) personnel information, including resourcing / redundancy decisions;
  - (8) non-standard commercial terms of trading, incentives, payment arrangements, IP licensing arrangements;
  - (9) information from third parties under obligations of Confidence.
- c. Information whose unauthorised access or disclosure would cause serious damage to the interests of the owner / author. It would inflict harm by virtue of serious financial loss, severe loss of profitability or opportunity, grave loss of reputation.

60.10. Nothing in this Clause 60 shall affect the Parties' obligations of confidentiality where Confidential Information is disclosed orally in confidence.

60.11. If disclosure is permitted under this Clause 60, the Contractor must ensure the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

## **61. Cyber**

61.1. The provisions of Schedule 9 (Cyber) shall have effect.



## **PART 14 CHANGE**

### **62. Change and Change Management**

62.1. The provisions of Schedule 4 (Change and Change Management) shall have effect.

### **63. Notification of Change of Control**

63.1. The Contractor shall notify the Authority at the address given in Clause 63.3, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor and of any Sub-contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

63.2. For the purposes of this Clause 63, 'control' means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:

- a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
- b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor.

and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.

63.3. The Contractor shall submit any information provided pursuant to Clause 63.1 above to:

Mergers & Acquisitions section  
Supplier Relations Team

Spruce 3b #1301  
Ministry of Defence  
Abbey Wood  
Bristol  
BS34 8JH

63.4. The Authority's Representative shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to award of the Contract.

63.5. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with Clause 63.1. The Authority shall act reasonably in exercising its right of termination under this Clause 63.

63.6. If the Authority exercises its right to terminate in accordance with Clause 63.5, the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments,

liabilities or expenditure shall be reasonably and properly chargeable by the Contractor and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this Clause 63 must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

- 63.7. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Clause 63.
- 63.8. The Contractor shall notify the Authority of any change in its registered address or place of business.

## **PART 15 EXPIRY AND TERMINATION**

### **64. Termination on Expiry**

- 64.1. This Contract shall terminate automatically on the Expiry Date unless it has been terminated earlier in accordance with the provisions of this Contract. The Contractor shall not be entitled to any compensation for termination of this Contract on the Expiry Date.

### **65. Failure of Performance (Contractor Default)**

- 65.1. Subject to Clauses 65.3 to 65.10 inclusive (Rectification & Persistent Breach), the Authority shall be entitled to terminate the whole or any part of this Contract by giving notice in writing to the Contractor if any one or more of the defined Contractor Default events occurs.
- 65.2. If a Contractor Default has occurred and the Authority wishes to terminate the whole or any relevant part of this Contract pursuant to Clause 65.1, it must serve a notice (the "Termination Notice") on the Contractor stating:
- a. that the Authority is terminating this Contract (or part) for Contractor Default;
  - b. where relevant, the part of this Contract that the Authority is terminating;
  - c. the type and nature of Contractor Default that has occurred, giving reasonable details; and
  - d. that this Contract (or part) shall (subject to Clauses 65.3 to 65.10 below) terminate on the day (the "Contractor Default Termination Date") falling 40 Business Days after the date the Contractor receives the Termination Notice.

#### **Rectification**

- 65.3. Where a Contractor Default Notice cites a Contractor Default of the type and nature falling under limb (a) material breach and/or limb (h) failure to commence the provision of any Training Service and/or limb (i) failure to take out Required Insurance and/or limb (k) a Personal Data Breach of the definition of "Contractor Default" in Schedule 1 (Definitions), the Contractor may, within 5 Business Days and in consultation with the Authority, have the opportunity to propose a remedy to such Contractor Default at its own expense and within a timetable approved by the Authority. This shall take the form of a Rectification Plan to be submitted within 5 business days, or such other period agreed between the Parties having regard to the nature of the breach save that where a Termination Notice is served for a Contractor Default under limb (k) of the definition of "Contractor Default", the Authority shall, subject to giving prior written notice to the Contractor, have the right to disregard any Rectification Plan and to terminate the whole Contract if the Data Processing activities are the sole purpose and requirement of the Contract or if the requirement of the Contract is wholly dependent on the Data Processing activities; or the part of the Contract relating to the unperformed Data Processing activities where the Data Processing activities are a discrete item on the Schedule of Requirements or are otherwise severable.

- 65.4. Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the Contractor Default Notice in question shall be deemed to be revoked.
- 65.5. Where the Authority agrees with such proposed remedy, and the remedy is not implemented in accordance with the Rectification Plan to the Authority's satisfaction, the Contractor Default Termination Date shall be the day falling 40 Business Days after the date by which the remedy was agreed to be implemented and the Contractor shall indemnify the Authority for any costs incurred or losses suffered by the Authority, as determined by the Authority, due to or during any extension of the Contract beyond the Contractor Default Termination Date specified in the Termination Notice .
- 65.6. If the Authority considers that such proposed remedy will not restore the provision of the Training Services or any part in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify all breaches of this Contract, the Authority may terminate the whole or part of this Contract immediately (and the Contractor Default Termination Date shall be the day falling 40 Business Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, at its discretion, may agree)).

#### Persistent Breach

- 65.7. If a particular breach by the Contractor of this Contract has continued for more than 60 (sixty) Business Days or occurred more than 3 (three) times in any 3 (three) month period, then the Authority's Representative may serve a notice on the Contractor:
- a. specifying that it is a formal warning notice; and
  - b. giving reasonable details of the breach; and
  - c. stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.
- 65.8. If, following service of such a warning notice the breach specified has continued beyond 30 (thirty) days or recurred in 1 (one) or more months within the 6 (six) month period after the date of service, then the Authority's Representative may serve another notice (a Final Warning Notice) on the Contractor's Representative:
- a. specifying that it is a Final Warning Notice; and
  - b. stating that the breach specified has been the subject of a warning notice served within the 6 (six) month period prior to the date of service of the Final Warning Notice; and
  - c. stating that, if such breach continues for more than 30 (thirty) days or recurs in 1 (one) or more months within the 6 (six) month period after the date of service of the Final Warning Notice, this Contract may be terminated.
- 65.9. A warning notice may not be served in respect of any incident of breach which has previously been counted in the award of a separate warning notice.

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

#### Termination Date for Contractor Default

- 65.11. Following the issue of a Termination Notice pursuant to Clause 65.3 above, and where the Authority is terminating the whole of this Contract, this Contract shall (subject to Clauses 65.4 to 65.7 above) terminate on the Contractor Default Termination Date.

#### Partial Termination

- 65.12. Where the Authority is terminating part of this Contract, the Parties shall, subject to Clause 71 (Continuing Obligations), owe each other no further obligations in respect of such part of this Contract as is specified in the Termination Notice from the Contractor Default Termination Date.
- 65.13. For the avoidance of doubt, where Clause 65.9 above applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

#### Financial Consequences of Termination for Contractor Default

- 65.14. Where this Contract (or any part) is terminated pursuant to this Clause 65, the provisions of Clauses 65.12 to 65.14 below shall apply.
- 65.15. The Contractor shall be entitled to be paid (subject to any other provision of this Contract affecting the level of such payment) for any aspect of the Training Services that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract.
- 65.16. Where the Authority makes alternative arrangements for the provision of the Training Services, the Authority shall be entitled to recover from the Contractor the cost of making such alternative arrangements, together with any additional expenditure incurred by the Authority as a result of such other arrangements throughout the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to this Clause 65.
- 65.17. In the event that, as a result of any Contractor Default, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.
- 65.18. The Authority's rights and remedies under this Clause 65 are in addition to its rights and remedies implied by Legislation and at common law.

#### **66. Break**

- 66.1. The Authority shall, in addition to its power under any other of the provisions of this Contract, have the power to terminate this Contract at any time by giving to the Contractor 40 Business Days' written notice.

- 66.2. The Contractor shall notify the Authority within 10 Business Days of receipt of the notice if it believes that the notice period referred to in Clause 66.1 is insufficient to allow it to comply with the Law in conducting employee consultations, and shall provide evidence of this to the Authority's reasonable satisfaction. Upon receipt of the Contractor's request and satisfactory evidence, the Authority shall extend the notice period by a reasonable period of time to enable the Contractor to conduct employee consultations in accordance with Law.
- 66.3. Upon the expiration of such notice period, this Contract shall terminate, without prejudice to the rights of the Parties already accrued as at the Termination Date.
- 66.4. In the event of such notice being given, the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:
- a. to direct the Contractor, where provision of any element of the Training Services has not been commenced, to refrain from commencing provision;
  - b. to direct the Contractor to complete the provision of any element of the Training Services and/or to concentrate its efforts on the completion of any elements of the Training Services where provision of the same (or any activities that are integral to such provision) has (or have) already commenced;
  - c. to direct the Contractor to, as soon as may be reasonably practicable after the receipt of such notice, take such steps as will ensure that the rate of provision of the Training Services (or the rate of performance of any activities that are integral to such provision) is reduced as rapidly as possible; and
  - d. to direct the Contractor to determine on the best possible terms such Sub-Contracts and orders for materials, parts, components and/or Training Services as have not been completed, observing in connection with this any direction given under Clauses 66.4b and 66.4c as far as may be possible.
- 66.5. If, in any particular case, hardship to the Contractor should arise from the operation of this Clause 66, it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists, shall make such allowance (having particular regard to the provisions of Clauses 66.6 to 66.9), if any, as in its opinion is reasonable, and the decision of the Authority on any matter or thing arising out of this Clause 66 shall be final and conclusive.

#### Financial Consequences of a Break

- 66.6. Where this Contract is terminated pursuant to this Clause 66, the provisions of Clauses 66.7 to 66.9 below shall apply.
- 66.7. Where this Clause applies (and subject always to the Contractor's compliance with any direction given by the Authority pursuant to this Clause 66):
- a. subject to Part 12 (Intellectual Property) the Authority shall have the right, where it so elects, to take over from the Contractor at a fair and reasonable price all unused and undamaged materiel, that is:

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

except such materiel as the Contractor shall, with the concurrence of the Authority, elect to retain;

- b. the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of all such unused and undamaged materiel in the possession of the Contractor at the Termination Date such as to enable the Authority to make a determination pursuant to Clause 66.7(a). The Contractor shall deliver to the Authority any materiel that previously belonged to the Authority and any materiel that the Authority decides to take over pursuant to Clause 66.7(a) in accordance with the directions of the Authority (including directions as to the timing of delivery) who shall pay to the Contractor fair and reasonable handling and delivery charges incurred by the Contractor in complying with such directions and supported by proper documentary evidence; and
- c. in respect of Training Services (and any elements) that does not consist of physical items, the Authority shall pay the Contractor fair and reasonable prices for each such Training Service (any element) that is provided or partially provided in accordance with this Contract. Any dispute relating to this Clause 66.7(c) shall be determined pursuant to Clause 88 (Dispute Resolution Procedure).

66.8. Where this Clause applies, the Authority shall (subject to Clause 66.9 below and to the Contractor's compliance with any direction given by the Authority pursuant to this Clause 66) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of this Contract, subject to:

- a. the Contractor taking all reasonable steps to mitigate such loss;
- b. where the Contractor holds insurance, the Contractor reducing its unavoidable costs by any insurance sums and
- c. the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination of this Contract pursuant to this Clause 66.

Any dispute relating to this Clause 66.8 shall be determined pursuant to Clause 88 (Dispute Resolution Procedure).

66.9. The Authority shall not be liable under Clause 66.8 above to pay any sum which:

- a. would be claimable under any insurance held (or required to be held pursuant to this Contract or Law) by the Contractor, but for the fact that the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy, or has failed to take out or maintain any insurance that it is required pursuant to this Contract or Law to take out and/or maintain; or

- b. when added to any sums already paid or due to the Contractor under this Contract, exceeds the total sum that would have been payable to the Contractor if this Contract had not been terminated prior to the Expiry Date; or
  - c. relates to or arises from the existence or termination of any Sub-Contract.
- 66.10. In addition to the rights of the Authority under this Clause 66 (Break), the Authority shall have the power to terminate any Task or Tasks from the Statement of Requirements in accordance with Schedule 4 (Change and Change Management) paragraph 13.

## **67. Termination for Corrupt Gifts and Fraud**

- 67.1. The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):
- a. offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:
    - (1) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or
    - (2) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown.
  - b. enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- 67.2. If the Contractor, Contractor employees, agents of the Contractor, any Sub-Contractor, Sub-Contractor Employee, agents of the Sub-Contractor or anyone acting on behalf any of the aforementioned does any of the Prohibited Acts or commits any offence under the Bribery Act 2010 with or without the knowledge or Authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- a. to terminate this Contract and recover from the Contractor the amount of any loss resulting from the termination;
  - b. to recover from the Contractor the amount or value of any such gift, consideration or commission; and
  - c. to recover from the Contractor any other loss sustained in consequence of any breach of this Clause 67, where this Contract has not been terminated.
- 67.3. In exercising its rights or remedies under this Clause 67, the Authority shall:
- a. act in a reasonable and proportionate manner having regard to such matters, including but not limited to, the gravity and the identity of the person performing the Prohibited Act or committing of any offence under the Bribery Act 2010;



- b. give all due consideration, where appropriate, to action other than termination of this Contract, including but not limited to:
  - (1) requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act or committing of any offence under the Bribery Act 2010 is that of a Sub-Contractor, Sub-Contractor Employee, agent or any other person acting on its or their behalf; and
  - (2) requiring the Contractor to procure the dismissal of an employee or agent (whether their own or that of a Sub-Contractor or anyone acting on its behalf) where the Prohibited Act or committing of any offence under the Bribery Act 2010 is that of such employee.

67.4. Where this Contract has been terminated under Clause 67.2, the powers given by Clause 65 shall apply as if there had been a failure in performance.

67.5. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause 67.

## **68. Miscellaneous Provisions**

68.1. Each Party shall (subject to the provisions of Clause 38 (Recovery of Sums Due)) pay to the other any amounts payable pursuant to Clauses 65 to 67 within 20 Business Days of the Termination Date (or, if later, within 20 Business Days of the amount being identified by both Parties as being payable, where it was not possible to determine on the Termination Date that such amount was payable).

68.2. Any payment by the Authority to the Contractor pursuant to Clauses 65 to 67 shall be in full satisfaction of any claim which can be made against the Authority by the Contractor and shall be the sole remedy of the Contractor in relation to termination of this Contract.

## **69. Co-operation on Expiry or Termination of Contract**

69.1. During the final 6 months before the Expiry Date, or during any notice period applying to an earlier termination of this Contract or any part in accordance with its terms, the Contractor shall co-operate fully and in good faith with the transfer of responsibility for the provision of the Training Services (or any part thereof) from the Contractor to any person (a "Follow-On Contractor") or to the Authority as so notified by the Authority, and for the purposes of this Clause the meaning of the term "co-operate" shall include but not be limited to:

- a. shall comply with its obligations set out in the exit requirements as contained in Schedule 5 (Transition Plans) including the provision of Re-competition Data.
- b. liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the transfer of such provision to the Authority or to such Follow-On Contractor;
- c. allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to any Establishments and/or GFA/Issued Property used in the provision of the Training Services, but not so as to interfere with or impede the provision of the Training Services; and

- d. without prejudice to the obligations of the Contractor pursuant to Clause 60 (Disclosure of Information), providing to the Authority and/or to any Follow-On Contractor all and any information concerning:

- (1) any Establishments; and
- (2) provision of the Training Services,

which is reasonably required for the efficient transfer of responsibility for performance of the Contractor's obligations, but excluding any information and data protected by Part 12 (Intellectual Property) and any information which is commercially sensitive to the Contractor (and for the purpose of this Clause 69 "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor, but shall not include any information referred to in Schedule 16 (TUPE)).

69.2. For a period of six months after the Expiry Date or the Termination Date in accordance with its terms, the Contractor shall provide all reasonable assistance, guidance and information (subject always to the limitations in respect thereof set out in Clause 66.1) to any Follow-On Contractor or the Authority (as the case may be), and shall be paid monthly in arrears its reasonable costs actually incurred and directly arising from such provision, subject to:

- a. such provision having been expressly requested and approved by the Authority in advance; and
- b. the Contractor providing satisfactory evidence of the same to the Authority at the end of each month.

69.3. Without prejudice to the provisions of Clause 69.2, the Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for provision of the Training Services (or any part) to a Follow-On Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

69.4. Following the Expiry Date or any earlier Termination Date, the Contractor shall, with the Authority's consent (not to be unreasonably withheld), be allowed reasonable access to land and/or premises owned or controlled by the Authority in order to carry out winding-down activities.

69.5. During the final 6 months before the Expiry Date, or during any notice period applying to an earlier termination of this Contract (or any part thereof), the Contractor shall protect and preserve all GFA and Issued Property in its possession.

69.6. Without prejudice to Clauses 69.1d and 69.5, on termination of this Contract (or any part thereof), the Contractor shall, upon request by the Authority, which request shall be made within three months of:

- a. the Expiry Date; or
- b. service of any Termination Notice as soon as practicable, allow the Authority access to all data and information (subject to Clause 50

(Intellectual Property Rights – Vested in the Authority) required by the Authority to take over the terminated activities of this Contract, (and for the purposes of this Clause 69.6, "data and information" shall mean all data and information relevant to the provision by the Contractor of the Training Services in the performance of this Contract, and other relevant data and information reasonably required by the Authority which the Contractor is able to provide, including those relating to Intellectual Property Rights or to relations between the Contractor and any third party but excluding any information and data protected by Part 12 (Intellectual Property) and any information which is commercially sensitive to the Contractor (and for the purpose of this Clause 66 "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor, but shall not include any information referred to in Schedule 16 (TUPE)).

- 69.7. The Authority may request that Sub-Contracts be novated to the Authority or the Follow-On Contractor, or any other person required by the Authority on the same terms as the Sub-Contracts, and the Contractor shall give all reasonable assistance to the Authority, the Follow-On Contractor or such other person required by the Authority, as the case may be, in seeking the novation of Sub-Contracts placed in support of the provision of the Training Services under this Contract are novated to the Authority or the Follow-On Contractor, as the case may be, as requested. All costs (including the Contractor's reasonable and proper costs which are supported by documentary evidence) associated with any such novation of Sub-Contracts shall be borne by the Authority.

## **70. Force Majeure**

- 70.1. The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a Force Majeure Event.
- 70.2. The Contractor shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.
- 70.3. Subject to Clause 70.5, the Contractor shall be entitled to a reasonable extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract. Where the Authority reasonably considers that the Contractor has not made all reasonable endeavours to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of its obligations under this Contract, then the Authority shall be entitled to refuse to grant such an extension of time to the Contractor.
- 70.4. In the event of a Force Majeure Event, and provided that the Authority is satisfied that the Contractor has used all reasonable endeavours to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of its obligations under this Contract, the Authority shall continue to make payment to the Contractor for the Training Services, less the proportion of the Fixed Price

associated with the element of the Training Services affected by the Force Majeure Event. Where the Authority reasonably considers that the Contractor has not made all reasonable endeavours to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of its obligations under this Contract, then the Authority shall be entitled to reduce payments for the Training Services. Any dispute relating to this Clause 70.4 shall be determined in accordance with Clause 88 (Dispute Resolution Procedure).

70.5. The maximum extension of time granted under this Clause shall be limited to 3 months, after which time the Authority shall be entitled, on providing written notice to the Contractor, to terminate this Contract in accordance with Clause 63 (Break) or terminate any Task in accordance with Schedule 4 (Change and Change Management).

## **71. Continuing Obligations**

- 71.1. Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract,
- a. termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to the earlier of the Expiry Date or the Termination Date; and
  - b. termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:
    - (1) Clause 4 (Warranties and Undertakings);
    - (2) Clause 18 (Contractor's Personnel at Government Establishments);
    - (3) Clause 19 (Liability in Respect of Damage to Authority Property);
    - (4) Clause 28 (Accounting for the Property of the Authority);
    - (5) Clause 29 (Financial Reports);
    - (6) Clause 34 (Open Book Accounting and Auditing);
    - (7) Clause 37 (Payment);
    - (8) Clause 41 (Insurance);
    - (9) Clause 42 (Indemnities);
    - (10) Clause 43 (Non-Solicitation);
    - (11) Clause 48 (TUPE and Pension Matters);
    - (12) Part 12 (Intellectual Property);
    - (13) Part 13 (Security and Confidentiality);
    - (14) Clauses 65.14 to 65.17 (Financial Consequences of Termination for Contractor Default);
    - (15) Clauses 66.6 to 66.9 (Financial Consequences of a Break);
    - (16) Clause 67 (Termination for Corrupt Gifts and Fraud);
    - (17) Clause 69 (Co-Operation on Expiry or Termination of Contract)

- (18) Clause 88 (Dispute Resolution Procedure);
- (19) Clause 89 (Law of the Contract and Jurisdiction);
- (20) Schedule 1 (Definitions); and
- (21) any other provision of this Contract which is expressed to survive termination, or which is required to give effect to such termination or the consequences of such termination.

## **72. Exit Requirements**

- 72.1. The Contractor shall comply with its obligations set out in the exit requirements as contained in Schedule 5 (Transition Plans).

## **PART 16 MATTERS TO BE INCLUDED IN SUB-CONTRACTS**

### **73. Matters to be Included in Sub-Contracts**

73.1. The Contractor shall ensure that all Sub-Contracts shall at all times include:

- a. provisions such that the Sub-Contract shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted to the Authority without the prior written consent of the Authority;
- b. provisions that the Authority's rights referred to in this Part 16 (Matters to be Included in Sub-Contracts), which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable; and
- c. a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the Sub-Contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract.

73.2. In accordance with this Part 16 (Matters to be Included in Sub-Contracts), the Authority shall be entitled to directly enforce its contractual rights from the Sub-Contractors pursuant to its right under the Contracts (Rights of Third Parties) Act 1999.

### **74. Secrecy and Security**

74.1. The Contractor shall ensure that all Sub-Contracts shall include provisions for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to (and of equal effect on the Sub-Contractor to) those placed on the Contractor by the requirements set out or referred to in Part 13 (Security and Confidentiality).

74.2. The Contractor shall (and shall procure that its Sub-Contractors shall) give such notices, directions, requirements and decisions to the Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts pursuant to this Clause 74 into operation in such cases and to such extent as the Authority may direct.

74.3. The Contractor shall give the Authority such Information and particulars as the Authority may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the provisions of this Clause 74 have been and are being observed, and as to what the Contractor has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach.

74.4. Nothing in this Clause 74 shall be construed as intended to prevent any person from giving any Information or doing anything on any occasion when it is, by virtue of any Law, the duty of that person to give that Information or do that thing.

### **75. Security Measures**

#### **Provisions to be included in Sub-Contracts**

The Official Secrets Acts

75.1. The Contractor shall ensure that any Sub-Contract includes the following provisions and, if the Sub-Contractor refuses to agree to any of those provisions, shall refrain from entering into the Sub-Contract:

*“The Sub-Contractor shall:*

- a. take all reasonable steps to ensure that all Sub-Contractor Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 and National Security Act 2023 as amended, varied or modified shall apply to them and will continue so to apply after the completion or termination of this Contract; and*
- b. if directed by the Contractor or the Authority, ensure that any Sub-Contractor Employee shall sign a statement acknowledging that, both during the Contract Period and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 and National Security Act 2023 as amended, varied or modified shall (and where applicable by any other Legislation).*

#### **Security Measures**

*Unless it has the written authorisation of the Authority to do otherwise, neither the Sub-Contractor nor any of the Sub-Contractor Employees shall, either before or after the completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:*

- a. who is not a British citizen;*
- b. who does not hold the appropriate authority for access to the protected matter;*
- c. in respect of whom the Authority has notified the Sub-Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;*
- d. who is not a Sub-Contractor Employee; or*
- e. who is a Sub-Contractor Employee and has no need to know the information for the proper performance of this Contract.*

*Unless it has the written permission of the Authority to do otherwise, the Sub-Contractor and the Sub-Contractor Employees shall, both before and after the Expiry Date or Termination Date, take all reasonable steps to ensure that:*

- a. no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and*
- b. any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework 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 Sub-Contractor has taken or is taking reasonable steps as required by this Clause\*\*, shall be final and conclusive.*

*The Sub-Contractor shall:*

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

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

#### **Sub-Contracts**

*If the Sub-Contractor proposes to enter into a further sub-contract which will involve the disclosure of a Secret Matter to the sub-contractor, the Sub-Contractor shall:*

- a. *submit for approval of the Authority the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Sub-Contractor which the Authority shall reasonably require;*
- b. *incorporate into the sub-contract the terms of this Clause and such secrecy and security obligations as the Authority shall direct; and*
- c. *inform the Authority immediately if it becomes aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the sub-contract."*

#### **Termination**

75.2. The Contractor shall terminate the Sub-Contract immediately if any of the following occurs and shall include appropriate provisions to this effect in the Sub-Contract:

- a. the Sub-Contractor is in breach of any obligation under this Clause 75; or



- b. the Sub-Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies the Contractor accordingly.

#### Rights of Third Parties

75.3. The Contractor shall ensure that the Authority's ability to enforce its rights under any Sub-Contract, notwithstanding that it is not a party to such Sub-Contract is protected including, but not limited to, by ensuring that the provisions of the Contracts (Rights of Third Parties) Act 1999 are not excluded.

#### **76. Sub-Contractor IPR**

76.1. The Contractor shall ensure that all Sub-Contracts include:

- a. a licence for the Authority under IPR owned or controlled by a Sub-Contractor in the same terms as the licence the Authority receives in relation to IPR owned or controlled by the Contractor as set out in Part 12 (Intellectual Property); and
- b. an assignment of rights in IPR owned or controlled by a Sub-Contractor in the same terms as the assignment to the Authority of IPR owned or controlled by the Contractor as set out in Part 12 (Intellectual Property); and
- c. provisions that the Authority and the Contractor may register, in favour of the Authority, any licence of registered IPR owned or controlled by a third party.

76.2. The Contractor shall not enter into any Sub-Contract concerned with this Contract, nor extend any Sub-Contract derived from this Contract, unless the Authority has stated in writing to the Contractor that the Authority does not require any further assurance in respect of IPR beyond the Contractor meeting those obligations set out under Clause 76.1. However, where the obligations under Clause 76.1 are considered insufficient by the Authority, the Contractor shall not enter into any Sub-Contract concerned with this Contract nor extend any Sub-Contract derived from this Contract without first ensuring that the Authority obtains, through a direct agreement with the Sub-Contractor, the assurances that the Authority requires in respect of IPR on the same basis as provided for under this Contract in respect of Contractor owned or controlled IPR.

#### **77. Other Provisions**

77.1. The Contractor shall also ensure that all Sub-Contracts contain provisions capable of giving effect to the requirements of the following:

- a. Clause 12 (Transport Overseas);
- b. Clause 13 (Injuries, Disease And Dangerous Occurrences);
- c. Clause 18 (Contractor's Personnel At Government Establishments);
- d. Clause 19 (Liability In Respect Of Damage To Authority Property);
- e. Clause 20 (Contractor's Property);

- f. Clause 21 (Contractor's Representatives);
- g. Clause 22 (Health And Safety Hazard Control);
- h. Clause 25 (Contractor's Conduct on Authority Establishments);
- i. Clause 27 (Issued Property);
- j. Clause 28 (Accounting for the Property of the Authority)
- k. Clause 35 (Contractor's Records);
- l. Clause 44 (Equality);
- m. Clause 50 (Foreground Intellectual Property);
- n. Clause 51 (Background Intellectual Property);
- o. Clause 59 (Observance of Regulations);
- p. Clause 60 (Disclosure of Information);
- q. Clause 63 (Notification of Change of Control);
- r. Clause 65 (Failure of Performance);
- s. Clause 66 (Break);
- t. Clause 67 (Termination for Corrupt Gifts and Fraud);
- u. Clause 69 (Co-Operation on Expiry or Termination of Contract);
- v. Clause 79 (Quality Assurance);
- w. Clause 84 (Assignment);
- x. Clause 89 (Law of the Contract and Jurisdiction);
- y. Clause 98 (Protection of Personal Data);
- z. Clause 106 (UK Import and Export Licences); and
- aa. Clause 108 (Child Labour and Employment law).

## **78. Sub-Contracting**

- 78.1. The Contractor shall ensure (and shall secure that all Sub-Contractors ensure) that all Sub-Contracts include a requirement for any further sub-contracts of lower tiers to contain provisions capable of giving effect to all of the provisions of this Part 16 (Matters to be Included in Sub-Contracts), to the extent reasonably required by the Authority.
- 78.2. Notwithstanding any Sub-Contract, the Contractor shall be deemed to have performed any services under this Contract actually performed by a Sub-Contractor and shall remain responsible and liable for any services under this Contract performed by a Sub-Contractor as if the Contractor had performed those services itself.
- 78.3. Nothing in this Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority at any Establishment.

- 78.4. Prior to entering into any sub-contract, the Contractor shall notify the proposed sub-contractor that the Contractor is not, by virtue of prior agreement with the Authority, entitled to place a contract with any sub-contractor which does not comply with the conditions of this Part 16 (Matters to be Included in Sub-Contracts).
- 78.5. The Contractor shall retain, for 2 years from the Termination Date or the Expiry Date as the case may be (or such other period as the Authority may notify to the Contractor), a copy of all Sub-Contracts (or the relevant parts) sufficient to demonstrate the Authority's rights with respect to Part 16 (Matters to be Included in Sub-Contracts), including rights in respect of IPR held by a Sub-Contractor and shall provide certified copies of such records to the Authority upon request and within 14 Business Days of such request.
- 78.6. The Contractor shall inform the Authority immediately when it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in Part 13 (Security and Confidentiality) and, if requested to do so by the Authority, shall terminate the relevant Sub-Contract.

#### Change of Sub-Contractors and Terms of Sub-Contracts

- 78.7. By entering into this Contract, the Authority approves the Sub-Contractors appointed by the Contractor which the Contractor has notified to the Authority as at the date of this Contract.
- 78.8. If the Contractor wishes to replace a Sub-Contractor or engage an additional sub-contractor, the Contractor shall submit to the Authority:
- a. the name of the proposed sub-contractor;
  - b. a statement of the work to be carried out by such proposed sub-contractor;
  - c. a copy of the proposed sub-contract which shall include the matters required pursuant to Part 16 (Matters to be Included in Sub-Contracts); and
  - d. any other details known to the Contractor which the Authority may reasonably require.
- 78.9. The Authority may, at its sole discretion, seek to acquire the same rights from a proposed sub-contractor as are recited in Part 12 (Intellectual Property Rights) by means of a direct IPR agreement with a proposed sub-contractor, and the Contractor may not place a Sub-Contract until the Authority has confirmed in writing either that it has entered into such a direct agreement or that it does not wish to do so. Should the Authority opt for such a direct agreement, the Authority shall inform the Contractor, provided always that the Authority shall be responsible for its own costs in procuring and negotiating any such direct agreements.
- 78.10. The Authority shall (acting reasonably) confirm or reject the identity of the proposed sub-contractor and/or the terms of the proposed sub-contract within 30 Business Days of the Contractor's proposed change or proposed new engagement of a sub-contractor (submitted pursuant to Clause 78.8 above). For the avoidance of doubt, it shall be deemed reasonable for the Authority to reject any proposed sub-contractor that does not agree to be appointed under a sub-contract including the matters required pursuant to this Part 16 (Matters to be Included in Sub-Contracts).

78.11. The Contractor shall not, in respect of this Contract, employ a proposed new sub-contractor and/or use a proposed sub-contract, and shall ensure that a Sub-Contractor does not, in respect of this Contract, employ a sub-contractor and/or use a proposed sub-contract, rejected by the Authority pursuant to Clause 78.10 above.

78.12. On:

- a. the granting of Authority's approval pursuant to Clause 78.10; and
- b. the entering into of the relevant sub-contract documentation by the parties to it,

the proposed new sub-contractor and sub-contract shall become a Sub-Contractor and Sub-Contract respectively for the purposes of this Contract.

#### Sub-Contracting to Supported Businesses

78.13. When placing Sub-Contracts, the Contractor shall give consideration, as far as possible, to the placing of work on a competitive basis to Supported Businesses and, within 14 Business Days of a request by the Authority, shall provide evidence of such consideration satisfactory to the Authority.

#### Prompt Payment

78.14. Where the Contractor enters into a Sub-Contract for the purpose of performing this Contract, a term shall be included in such Sub-Contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the Sub-Contract requirements.

#### Advertising Subcontracts (Defence and Security Public Contracts Regulations 2011 only)

78.15. Subject to Clause 78.17 below, where the Contractor, after the Effective Date, elects to advertise the subject matter of any Sub-Contract with the view to appointing one or more Sub-Contractors estimated to be greater than the sum of £200,000 (two hundred thousand pounds sterling), it shall (unless the Authority otherwise agrees in writing):

- a. promptly notify the Authority, if the Contractor intends to award a Sub-Contract;
- b. publish an advertisement on (and provide all information required by) Defence Contracts Online in respect of each and any Sub-Contract opportunity;
- c. act transparently and treat all potential sub-contractors in an equal and non-discriminatory way;
- d. within 30 (thirty) days after the date on which such Sub-Contract shall have been awarded update the relevant advertisement on Defence Contracts Online in respect of such Sub-Contract identifying the name and registered office address details of the Sub-Contractor so appointed under such Sub-Contract and providing a description of the subject matter and the value (excluding VAT) of such Sub-Contract; and
- e. provide reports to the Authority's Nominated Commercial Officer, if so requested, on the number, type and value of Sub-Contract opportunities

placed on Defence Contracts Online and awarded in its supply chain during the Contract Period; and

- f. promote Defence Contracts Online to all Sub-Contractors and encourage those operators to register on it.

78.16. The Authority may issue guidance to the Contractor on how to advertise sub-contract opportunities on Defence Contracts Online from time to time and (where the Contractor elects to advertise the subject matter of any Sub-Contract after the Commencement Date with the view to appointing one or more Sub-Contractors after that date) the Contractor shall comply with such guidance so issued in relation to the advertisement of any Sub-Contract pursuant to this Clause 78.

78.17. Clauses 78.15 and 78.16 shall not apply:

- a. where pursuant to Regulation 37(3) of the Regulations the Authority obliges the Contractor to apply the provisions set out in Part 7 of the Regulations to all sub-contracts which the Contractor intends to award to third parties in connection with the Contract after the Effective Date; or
- b. in relation to any Sub-Contract or Sub-Contracts which the Contractor intends to award to any third party or third parties after the Effective Date, where pursuant to Regulation 37(3) the Authority obliges the Contractor to apply the provisions set out in Part 7 of the Regulations to the award of that or those Sub-Contract(s).

## **PART 17 GENERAL CONTRACT PROVISIONS**

### **79. Quality Assurance**

79.1. The Contractor shall develop, implement and comply with the following Quality Standards which shall cover all aspects of the provision of the Training Services under this Contract:

- a. AQAP 2110 Edition D Version 1 – NATO Quality Assurance Requirements for Design, Development and Production;
- b. AQAP 2105 Edition C Version 1 – NATO Requirements for Deliverable Quality Plans;
- c. AQAP 2210 Edition A Version 2 – NATO Supplementary Software Quality Assurance Requirements to AQAP 2110 or AQAP 23100 shall apply;
- d. DSAT QS 001:2008 - The Defence Systems Approach to Training.

79.2. The Contractor shall have, and shall, on request, give the Authority copies of, current certification carried out by a UKAS approved organisation prior to Service Commencement Date of the following standards:

- a. BS EN ISO 9001:2015 – Quality Management Systems;
- b. BS EN ISO 4001:2115 – Environmental Management Systems.

Certification at these standards will be maintained at these or the applicable equivalent standards for the Contract Period.

79.3. A Deliverable Quality Plan is required in accordance with Clause 80 (Deliverable Quality Plan) and AQAP 2105 Edition C Version 1 – NATO Requirements for Deliverable Quality Plans. Unless otherwise notified, the Deliverable Quality Plan shall be delivered to the quality focal point 3 months prior to the Service Commencement Date.

79.4. The Parties shall comply with their respective obligations set out in Schedule 29 (DEFSTAN 05-61 (Quality Assurance Procedural Requirements - Part 1, Part 4 and Part 9)) as follows:

- a. DEFSTAN 05-61 Part 1, Issue 6 – Quality Assurance Procedural Requirements – Concessions;
- b. DEFSTAN 05-91 Part 4 Issue 3 – Quality Assurance Procedural Requirements – Contractor's Working Parties; and
- c. DEFSTAN 05-61 Part 9, Issue 5 – Quality Assurance Procedural Requirements – Independent Inspection Requirements for Safety Critical Items.

79.5. The Parties shall use the appropriate AQAP Standards Related Document (SRD) for guidance on the application and interpretation of AQAPs.

79.6. For any Software Projects a Software Project Plan is required in accordance with AQAP 2105 Chapter 5, for Authority acceptance.

### **80. Deliverable Quality Plan**

- 80.1. The Contractor shall submit the Deliverable Quality Plan as defined in AQAP 2105 (NATO Requirements for Deliverable Quality Plans) to the Authority in accordance with this Contract.
- 80.2. The Deliverable Quality Plan is incorporated into this Contract in Schedule 30 (Deliverable Quality Plans). Notwithstanding that the Deliverable Quality Plan was seen and agreed by the Authority, the Contractor shall be solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.

## **81. Spare Capacity**

- 81.1. The Contractor shall not, without the prior written consent of the Authority, carry out any Commercial Work during the Contract Period.
- 81.2. Before undertaking any Commercial Work, the Contractor shall submit detailed proposals in respect of the Commercial Work to the Authority and shall request the consent of the Authority for such Commercial Work. The Authority shall be entitled to withhold its consent at its absolute discretion.
- 81.3. In the event that the Authority consents to the Contractor undertaking Commercial Work pursuant to Clause 81.2 above, the Parties shall enter into a separate agreement governing the relationship between the Parties in relation to the Commercial Work which shall repeat the obligations of each of the Parties set out in this Clause 81.
- 81.4. The Contractor shall provide to the Authority a report every month with details of the costs incurred and profit made in relation to any Commercial Work carried out during the Contract Period.
- 81.5. The Contractor shall not charge any costs associated with Commercial Work to the Authority as part of the Contract Price. Any Commercial Work carried out for the Authority or any other Government Department shall be charged directly to the relevant customer of such Commercial Work and not as part of the Contract Price.
- 81.6. The requirements of this Contract shall take precedence over any Commercial Work and the Contractor shall not carry out any Commercial Work which may have an adverse impact on the provision of the Training Services. The Contractor shall organise its programme of Commercial Work to ensure there is no such adverse impact on the Training Services.
- 81.7. The Authority shall reserve its rights to contract with third parties for any spare capacity. For the avoidance of doubt, this Contract does not grant the Contractor exclusive rights over spare capacity.

## **82. Working with Other Authority Contractors**

- 82.1. The Contractor shall co-operate and liaise in good faith with all other Authority Contractors at the Establishments as necessary to enable it to perform its obligations under this Contract.
- 82.2. In performing its obligations under this Contract the Contractor shall have regard to the obligations of the Authority under any other contracts entered into in relation to the Establishments insofar as the Contractor has been given notice of any such obligations at any time and shall not by any act, omission or default do anything to cause or contribute to any breach by the Authority of any such obligation.

82.3. At the request of the Authority, the Contractor shall enter into good faith discussions with the Authority and any other relevant Authority Contractor, to agree an interface agreement.

### **83. Management of Contractor Waste**

83.1. The Parties agree that:

- a. the Authority shall be responsible for the safe disposal, in accordance with the WEEE Directive of any electrical and electronic equipment supplied to the Contractor as GFA in accordance with Clause 26 (Government Furnished Assets); and
- b. the Contractor shall be responsible for the safe disposal, in accordance with the WEEE Directive of any electrical and electronic equipment procured by the Contractor in connection with the delivery of Training Services under this Contract.

83.2. The Contractor shall comply with each of the Establishment's waste disposal procedures set out in Schedule 31 (Procedures for Waste Disposal).

### **84. Assignment**

Assignment of this Contract by the Contractor

84.1. Subject to Part 16 (Matters to be Included in Sub-Contracts), the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Authority's Representative.

Transfer of this Contract by the Authority

84.2. The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) other than in respect of the whole of this Contract to any person, other than to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:

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

### **85. Tax Compliance**

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



- 85.2. If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:
- a. notify the Authority in writing of such fact within 20 Working Days of its occurrence; and
  - b. promptly provide to the Authority:
    - (1) details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (2) such other information in relation to the OOTNC as the Authority may reasonably require.
- 85.3. For the avoidance of doubt, the obligation at Clause 85.2 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.
- 85.4. The duty to notify does not substitute the Contractor's obligations under Clause 29 (Financial Reports) when used.
- 85.5. The following shall be a Contractor Breach:
- a. the warranty given by the Contractor pursuant to Clause 85.1 is materially untrue; or
  - b. the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 85.2; or
  - c. the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.
- 85.6. In the event that the Authority terminates the Contract under Clause 85.5, the Authority shall be entitled to recover from the Contractor:
- a. the amount of any loss resulting from the termination; and
  - b. any other loss sustained in consequence of any breach of Clause 85, where the Contract has not been terminated.
- 85.7. In exercising its rights or remedies under Clause 85, the Authority shall:
- a. act in a reasonable and proportionate manner taking into account, among other things:
    - i. the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
    - ii. any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC.
  - b. Without prejudice to Clause 85.6, seriously consider, where appropriate, action other than termination of the Contract to deal with the failure by the Contractor to comply with Clause 85.

## **86. Measures in a Crisis**

86.1. If, at any time, the Authority believes, in its sole opinion, that there exist circumstances to which Clause 86.2 applies, the Authority's Representative may issue a written notice to the Contractor's Representative of such belief.

86.2. The circumstances referred to in Clause 86.1 are where, in view of:

- a. the national interest, the requirements of national security, or the occurrence of a state of transition to war, war or other emergency (whether or not involving hostilities); and/or
- b. a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; and/or
- c. a request by NATO, the United Nations, the European Union or any other country for support and assistance in relation to international obligations,

it is necessary, appropriate, or desirable for the Authority to take all or any of the measures described in Clause 86.4 and/or Clause 86.5.

86.3. Measures in a Crisis shall cease to apply when the Authority's Representative issues a written notice to that effect to the Contractor's Representative and thereafter the Contractor shall continue to be bound by the provisions of this Contract.

### **Effect of Implementation of Measures in a Crisis**

86.4. If the Authority's Representative has issued the notice contemplated in Clause 86.1 the Authority's Representative may require the Contractor, within such period as the Authority's Representative in its sole discretion specifies (but provided that such period is reasonable taking into account all relevant circumstances), to provide such information in the possession, knowledge or control of the Contractor as the Authority's Representative may, in its sole discretion, require including information relating to all or any of the following matters:

- a. the provision of the Training Services currently being carried out by the Contractor for the Authority and any third parties; and/or
- b. the provision of the Training Services to be carried out by the Contractor (and due to commence within a period specified by the Authority) for the Authority and any third parties; and/or
- c. the Contractor's current deployment of its employees whether inside or outside the Establishments; and/or
- d. all supporting equipment and documentation currently held by the Contractor and the location of such equipment and documentation,

and the Contractor shall promptly and diligently comply fully with the requirement to provide such information.

86.5. Upon providing the Authority's Representative with the information requested pursuant to Clause 86.4, or upon expiry of the period specified by the Authority for the supply of such information, the Contractor shall, upon being so requested by the Authority's Representative, discuss in good faith with the Authority's Representative

any matters which the Authority, in its sole opinion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation of priorities for, or for the reorganisation of, the current provision of the Training Services, or to be provided, by the Contractor. These shall be in order to deal with the circumstances which gave rise to the issuing of a notice pursuant to 86.1, including the following matters:

- a. the revision (including the early completion, suspension or cancellation) of any provision of the Training Services for the Authority;
- b. the early completion, suspension or cancellation of any services by the Contractor for third parties; and
- c. the immediate implementation of new services,

and the Parties shall endeavour, as far as reasonably possible, to reach agreement as a matter of urgency on such matters.

#### Authority's Overriding Rights

86.6. Notwithstanding any provision to the contrary in this Contract, and notwithstanding that any of the measures described in Clause 86.5 may not have been taken, required to be taken, or have been completed, the Authority may, at any time and in its sole discretion, step-in to this Contract, pursuant to Clause 87 and/or the Authority's Representative may instruct the Contractor:

- a. to increase, to suspend, or to cancel, any part of the Training Services carried out by the Contractor, to remove (permanently or temporarily) the property of third parties from the Establishments and to take all reasonable steps to minimise and mitigate any loss or damage to the Contractor;
- b. to accelerate to early completion or to suspend the provision of the Training Services;
- c. to carry out any changes whatsoever to this Contract required by the Authority without reference to Part 14 (Change) of this Contract; and
- d. to deploy its employees in accordance with the Authority's directions,

and the Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in this Clause 86.6.

86.7. The Contractor shall not be required to take, or refrain from, any action which:

- a. is outside the power or technical capability or capacity of the Contractor or its Sub-Contractors;
- b. requires the Contractor to infringe any Law; or
- c. is beyond the financial capacity of the Contractor (unless the Authority meets any costs arising as a result of such action as and when such costs accrue to the Contractor).

#### Authority Indemnity on Measures in a Crisis

86.8. If the Authority instructs the Contractor pursuant to this Clause 86 to take actions not otherwise required under this Contract, the Authority shall indemnify the Contractor against any losses from any claim or action for damages by a third party

against the Contractor arising out of any action which the Authority may require the Contractor to take pursuant to Clause 86.6 provided that:

- a. the Contractor shall promptly notify the Authority in writing of any such claim or action or threatened claim or action;
- b. the Contractor shall act in accordance with the Authority's instructions regarding the manner in which such claim or action or threatened claim or action is to be dealt with or regarding the conduct of any legal proceedings; and
- c. the Contractor shall not compromise the Authority's position in any way whatsoever by making statements or admissions (other than in accordance with the Authority's instructions) and shall do nothing which could prejudice the defence of any such claim or action or threatened claim or action.

86.9. To the extent that such work is not covered by express agreement between the Parties, the Authority shall pay to the Contractor a fair and reasonable price for any work carried out by the Contractor in complying with the Authority's instructions under Clause 86.6.

## **87. Authority Step-In**

87.1. In this Clause 87 references to the Authority taking action shall be deemed to include references to the Authority procuring the taking of action by others on behalf of the Authority.

87.2. If the Authority believes it needs to take action in connection with the Training Services due to the matters specified in Clause 86.2, then the Authority shall be entitled to take action in accordance with Clauses 87.4 and 87.5.

87.3. If the Authority has stepped into this Contract pursuant to Clause 87.2, the provisions of Clause 87.9 shall apply.

87.4. If the Authority reasonably believes that it needs to take action in connection with the Training Services;

- a. because a serious risk exists to the health or safety of persons or property or to the environment; and/or
- b. to discharge a statutory duty; and/or
- c. because the Authority invokes Clause 86; and/or
- d. because a Contractor Default has occurred,

then the Authority shall be entitled to take action in accordance with Clause 87.5 and 87.6.

87.5. If Clause 87.4 applies and the Authority wishes to take action, the Authority's Representative shall notify the Contractor's Representative of the following:

- a. the action it wishes to take;
- b. the reason for such action;
- c. the date it wishes to commence such action;

- d. the time period which it believes shall be necessary for such action; and
- e. to the extent practicable, the effect on the Contractor and its obligation to provide the Training Services during the period such action is being taken.

87.6. Following service of such notice, the Authority shall take such action as notified under Clause 87.5 and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

#### Effect of Step-In on Contractor Default

87.7. If the Required Action is taken as a result of a Contractor Default then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing the Training Services:

- a. the Contractor shall be relieved from its obligations to provide such part of the Training Services; and
- b. in respect of the period in which the Authority is taking Required Action, the Contract Price due from the Authority to the Contractor shall be adjusted accordingly and the Contractor shall pay to the Authority any costs incurred by it taking the Required Action to the extent such costs are in excess of the Contract Price which would have been due to the Contractor if the Contractor had been providing the Training Services affected by the Required Action.

87.8. The Authority's right to take any Required Action for Contractor Default under Clause 87.7 does not waive the Authority's right to terminate in accordance with Clause 65 (Failure of Performance).

#### Effect of Step-In Without Contractor Default

87.9. Subject to Clause 87.10, if the Required Action is taken other than as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Training Services:

- a. the Contractor shall be relieved from its obligations to provide such part of the Training Services; and
- b. in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance, the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Training Services affected by the Required Action in full over that period.

#### Authority Step-Out

87.10. The Authority's Representative may at any time during the period of the Required Action notify the Contractor's Representative that the Authority wishes to cease the Required Action and the date on which it intends to cease the Required Action.

87.11. On the date on which the Required Action ceases:

- a. the Authority will be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action other than its obligations to pay the Contractor pursuant to this Clause 87. Such release from obligations and liability shall not extend to any third party claims arising as a consequence of the act or omission of the Authority or the Authority's Representatives during the period of the Required Action; and
- b. the Contractor shall resume all or any part of the Training Services which were the subject of the Required Action.

## **88. Dispute Resolution Procedure**

- 88.1. The Parties shall attempt to resolve in good faith any dispute arising out of or relating to this Contract through negotiations between the respective Representatives of the Parties having authority to settle the matter in accordance with Schedule 3 (Governance and Contract Management) which attempts may include the use of any Alternative Dispute Resolutions procedure on which the Parties may agree.
- 88.2. In the event that the dispute is not resolved by negotiation (or where the Parties have agreed to use an Alternative Dispute Resolution procedure, by the use of such procedure) in accordance with Schedule 3 (Governance and Contract Management) the dispute shall, unless it is a question to be referred to the Review Board pursuant to Clauses 88.7 to 88.10 below or Schedule 6 (Pricing Mechanism) paragraphs 20 to 22, be referred to arbitration in accordance with Clauses 88.3 to 88.6 below.
- 88.3. The Party initiating the arbitration shall give a written notice (the "Notice of Arbitration") to the other Party. The Notice of Arbitration shall specifically state:
- a. that the dispute is referred to arbitration; and
  - b. the particulars of this Contract out of or in relation to which the dispute arises.
- 88.4. Unless otherwise agreed in writing by the Parties, the arbitration and these Clauses 88.1 to 88.6 shall be governed by the provisions of the Arbitration Act 1996.
- 88.5. It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in section 39 of the Arbitration Act 1996.
- 88.6. The arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

## **89. Law of the Contract and Jurisdiction**

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

- 89.2. Subject to Clause 88 (Dispute Resolution Procedure) and without prejudice to the dispute resolution process set out in that Clause 88, each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Contract or breach.
- 89.3. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 89 and for the enforcement of any judgement, order or award given under English jurisdiction.
- 89.4. In the event of a Change of Law that i) materially impacts on either Party's ability to fulfil its obligations under the Contract on time or at all; or ii) creates material adverse cost consequences in performing the Contract as anticipated, then either party will be entitled to request a reasonable adjustment to the Contract Price and /or an extension of time for performance through the Schedule 4 (Change and Change Management Process) and failing resolution, through the process set out at Schedule 3 (Governance and Contract Management).
- 89.5. The provisions of Clause 89.4 are without prejudice to the rights of the Parties under this Contract in the event that a Party cannot materially perform the Contract in accordance with the terms and conditions of this Contract.

#### **90. Recourse to Public Funds**

- 90.1. The Contractor shall at all times perform its obligations under this Contract at its own risk and without recourse to Government or other public funds or guarantees now or in the future, save with the prior written agreement of the Authority's Representative.
- 90.2. The Contractor confirms that it has not applied and has no intention (as at the date of this Contract) of applying for any Government or European Union grants or funding or any other public funds or guarantees for the purpose of performing its obligations under this Contract. If the Contractor is or becomes entitled to apply for any such grants or funding in relation to its obligations under this Contract, it shall inform the Authority's Representative and obtain its consent before submitting the relevant application. The Authority's agreement to the Contractor's application will be given on condition that, should the Contractor receive any such grant or funding, the payments made by the Authority to the Contractor in accordance with this Contract will be reduced by the amount of the grant or funding.

#### **91. Independent Contractor**

- 91.1. Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.
- 91.2. Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority, and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.
- 91.3. Neither Party shall place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

#### **92. Public Relations and Publicity**

92.1. The Contractor shall not by itself, its employees or agents, and shall procure that its Sub-Contractors shall not:

- a. communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Project;
- b. photograph or film in or upon any Establishment;
- c. erect or exhibit on any part of the Establishments any signs or trade boards; or
- d. exhibit or attach to any part of the Establishments any notice or advertisement,

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

### **93. Service of Notices**

93.1. All Notices shall:

- a. be given in writing;
- b. be in a form which can be read, copied and recorded;
- c. be authenticated by signature or by such other method as agreed between the Parties;
- d. be marked for the attention of the appropriate department or officer; and
- e. be marked in a prominent position with the relevant Contract number.

93.2. Notices should be delivered by:

- a. hand;
- b. first-class prepaid post (or airmail, in the case of Notices to or from overseas).
- c. E-mail

93.3. Notices shall be deemed to have been received:

- a. if delivered by hand, on the day of delivery if it is a Business Day and otherwise on the first Business Day immediately following the day of delivery; and
- b. if sent by first-class prepaid post (or airmail, if appropriate), on the third Business Day (or on the tenth Business Day, in the case of airmail) after the day of posting.
- c. If sent by email date sent.

93.4. The addresses of each Party to which all Notices shall be sent are those specified in this Contract, or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 93.

93.5. Where either Party requests written confirmation of any communication which does not constitute a Notice, such request shall not unreasonably be refused.



**94. Waiver**

- 94.1. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- 94.2. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy and nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

**95. Severability**

- 95.1. If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:
- a. such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in this Contract but without invalidating any of the remaining provisions of this Contract; and
  - b. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision, the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

**96. Counterparts**

- 96.1. This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**97. Freedom of Information**

- 97.1. The Contractor shall, so far as matters involve the Contractor or related information, facilitate the Authority's compliance with FOI Legislation.
- 97.2. The Contractor acknowledges that, in order to be compliant with the FOI Legislation, the Authority may be obliged to provide information, on request, to third parties that relates to this Contract and/or any part of the preceding tender process.
- 97.3. Notwithstanding anything in this Contract to the contrary, including the obligations of confidentiality imposed on the Parties pursuant to Clause 60 (Disclosure of Information), if the Authority receives a request for information falling within the scope of the FOI Legislation, the Authority shall, subject to Clause 97.4, be entitled to disclose all information (in whatever form) as necessary in order to ensure its compliance with the FOI Legislation (and in this regard the Authority's decision as to whether it is necessary to disclose such information to ensure compliance shall be final and binding on the Contractor).
- 97.4. Prior to disclosing any information that the Authority believes to be the Contractor's Commercially Sensitive Information, the Authority shall consult with the Contractor as to the proposed disclosure and subsequently shall notify the Contractor of its decision whether or not to disclose the information in question.
- 97.5. If the Authority receives a request for information falling within the scope of the FOI Legislation, and requires the Contractor's assistance in obtaining such information,

the Contractor shall respond to any related request for assistance from the Authority, at its own cost and within 10 days of receiving the request for assistance or such shorter period as the Authority may prescribe as being necessary to comply with its obligations under the FOI Legislation.

- 97.6. The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor arising from the disclosure of any information falling within the scope of the FOI Legislation or as otherwise disclosed by the Authority as permitted under Clause 97.3.

**98. Protection Of Personal Data (Where Personal Data is being processed on behalf of the Authority)**

- 98.1. In connection with the Personal Data received under the Contract, each Party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each Party shall take appropriate technical and organisational measures against unauthorised or unlawful Data Processing provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.
- 98.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Contractor is the Data Processor. The only processing that the Contractor is authorised to do as requested by the Authority in the Contract, as summarised in DEFFORM 532 (attached to this Contract at Schedule 25) and may not be determined by the Contractor. The completed DEFFORM 532 shall form part of the Specification for the Contract.
- 98.3. The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority will not consider such notification to constitute formal legal advice.
- 98.4. The Authority represents and warrants:
- a. that the Authority's instructions to the Contractor in connection with or arising out of the processing of the Personal Data on the Authority's behalf are and will at all times be lawful and shall not contravene the DPA; and
  - b. Without limiting the generality of the foregoing, (save where the Contractor is the Controller), that the Authority has and will continue at all times to have in place all fair processing notices and (where applicable) consent mechanisms for Data Subjects necessary to enable the processing of Personal Data by the Contractor in accordance with the Contract and DEFFORM 532.
- 98.5. In The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, 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 provided under the Contract;
  - 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.

98.6. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under the Contract:

- a. process that Personal Data only in accordance with the Contract, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- b. ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
  - (1) nature of the data to be protected;
  - (2) harm that might result from a Data Loss Event;
  - (3) state of technological development; and
  - (4) cost of implementing any measures;
- c. ensure that:
  - (1) the Contractor Personnel do not process Personal Data except in accordance with the Contract (and in particular DEFFORM 532);
  - (2) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
  - (3) have the necessary probity by undertaking the Government's Baseline Personnel Security Standard or other standard as specified in the Contract;
  - (4) are aware of and comply with the Contractor's duties under this Clause;
  - (5) 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 (as defined in section 70(1) of the DPA) unless directed in writing to do so by the Authority or as otherwise permitted by the Contract; and
  - (6) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - (1) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
  - (2) the Data Subject has enforceable rights and effective legal remedies;

- (3) the Contractor 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 Authority in meeting its obligations); and
- (4) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- e. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

98.7. Subject to Clause 98.8, the Contractor shall notify the Authority without undue delay if, in connection with Personal Data processed under the Contract, it:

- a. receives a Data Subject Access Request (or purported Data Subject Access 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's Office or any other regulatory authority;
- e. receives a request from any Third Party (as defined in section 70(1) of the DPA) 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.

98.8. The Contractor's obligation to notify under Clause 98.6 shall include the provision of further information to the Authority in phases, as details become available.

98.9. Taking into account the nature of the processing, the Contractor shall provide the Authority with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 98.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- a. the Authority with full details and copies of the complaint, communication or request;
- b. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- d. assistance as requested by the Authority following any Data Loss Event;
- e. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

- 98.10. The Contractor shall maintain records as required by the DPA and as reasonably necessary to fulfil its obligations under Clause 98.9
- 98.11. The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the Contract.
- 98.12. The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 98.13. Before allowing any Sub-processor to process any Personal Data related to the Contract, the Contractor must:
- a. notify the Authority in writing of the intended Sub-processor and processing;
  - b. obtain the written consent of the Authority;
  - c. enter into a written Contract with the Sub-processor which give effect to the terms set out in this Clause 98 such that they apply to the Sub-processor; and
  - d. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 98.14. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 98.15. The Contractor may, at any time on not less than 30 Business Days' notice, propose revisions to this Condition 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 the Contract) which revisions the Authority, in its discretion, acting reasonably, may accept or reject.
- 98.16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office.
- 98.17. Any Contract amendments resulting from Clause 95.15 shall be conducted in accordance with any change control procedure as set out in the Contract.

## **99. Entire Agreement**

- 99.1. This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

## **100. Third Parties' Rights**

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

100.2. Where, and only where, this Contract expressly states that a third party shall be entitled to enforce a term of this Contract:

- a. the said third party shall be entitled to enforce that term in its own right;
- b. the Contractor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right, together with any other terms (including the terms of this Clause 100) relevant to the exercise of that right; and
- c. the third party's rights shall be subject to:
  - (1) the resolution of any relevant dispute pursuant to Clause 88 (Dispute Resolution Procedure); and
  - (2) Clause 89 (Law of the Contract and Jurisdiction).

## **101. 101 Contract Amendments**

101.1. This Contract may not be amended except in accordance with Schedule 4 (Change and Change Management) and by the written agreement of the duly authorised representatives of the Parties.

101.2. The written agreement of the Parties shall be obtained only by:

- a. a serially numbered amendment being issued to the Contractor by the Authority. The amendment shall come into force only when the Contractor has despatched to the Authority an unqualified acceptance of the Authority's offer on DEFFORM 10 set out in Schedule 22 (DEFFORM 10B); or
- b. the despatch by the Authority of a serially numbered amendment letter as an unqualified acceptance of an offer from the Contractor.

101.3. Any purported amendment to this Contract which does not satisfy the terms of this Clause 101 shall be of no effect.

101.4. Where an amendment to this Contract covering changed or additional requirements involves a change in price, the price shall be agreed prior to any authority to proceed being given by the Authority. However, in exceptional circumstances where the Authority wishes to add to this Contract requirement work which is unpriced, the Authority shall have the right to negotiate prices under the terms of Schedule 7 (Future Pricing and Pricing of Change).

## **102. Mitigation**

102.1. Each of the Authority and Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the other Party to this Contract.

## **103. Decoupling**

103.1. If the Contractor shall enter into any other contract with the Crown relating in any way to the subject matter of this Contract, then, no breach by the Crown of that other contract, nor any other act or omission, nor any written or oral statement, nor any representation whatsoever of or by the Crown, its servants or agents, or other

contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:

- a. give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority; or
- b. affect, modify, reduce or extinguish either the obligations of the Contractor or the rights or remedies of the Authority (including without limitation the right to liquidated damages under this Contract); or
- c. be taken to amend, add to, delete or waive any term or Clause of this Contract.

#### **104. Transparency**

- 104.1. Notwithstanding any other term of this Contract, including Clause 60 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- 104.2. Before publishing the Transparency Information to the general public in accordance with Clause 104.1, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, including the Contractor Commercially Sensitive Information.
- 104.3. The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 104.2. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- 104.4. For the avoidance of doubt, nothing in this Clause 104 shall affect the Contractor's rights at law.
- 104.5. The Contractor acknowledges that from time to time during the Contract Period the Authority may publish details of the Contractor's performance against KPI Q1-2, KPI Q3 and KPI Q4 ("Publishable Performance Information"). The Publishable Performance Information will be published on a quarterly basis (or such other time frequency as the Authority may determine) in accordance with a standard reporting format (as may be amended from time to time). The Authority shall convert the Contractor's monthly KPI Reports for this Contract to this standard reporting format, for publication purposes, in accordance with the table below.

<b>Contractor Performance Standard Reporting Format</b>	
KPI and conversion rating	METG Contract Performance Thresholds
<b>KPI 1 – Contractor provided training delivery (Q1&amp;Q2)</b>	

'Good' - contractual target	99% or more of Contractor periods delivered in accordance with the agreed Training Schedule within the Month.
'Approaching Target' - performance just below contractual target but not a major cause for concern unless underperformance is sustained	98% - <99% of Contractor periods delivered in accordance with the agreed Training Schedule within the month.
'Requires Improvement' - interventions required	95% - <98 % of Contractor periods delivered in accordance with the agreed Training Schedule within the month.
'Inadequate' - major interventions or contractual rectification plans required	< 95% of Contractor periods delivered in accordance with the agreed Training Schedule within the month.
<b>KPI 2 – Training Documentation Upkeep and Maintenance (Q3)</b>	
'Good' - contractual target	95% or more of courses for which the Contractor has responsibility are reviewed in accordance with the Document Upkeep Plan during the month
'Approaching Target' - performance just below contractual target but not a major cause for concern unless underperformance is sustained	90% - <95% of courses for which the Contractor has responsibility are reviewed in accordance with the Document Upkeep Plan during the month
'Requires Improvement' - interventions required	85% - <90% of courses for which the Contractor has responsibility are reviewed in accordance with the Document Upkeep Plan during the month
'Inadequate' - major interventions or contractual rectification plans required	<85% of courses for which the Contractor has responsibility are reviewed in accordance with the Document Upkeep Plan during the month
<b>KPI Training Design Upkeep and Maintenance (Q4)</b>	
'Good' - contractual target	>95% of courses reviewed in accordance with the Document Upkeep Plan during the month
'Approaching Target' - performance just below contractual target but not a major cause for concern unless underperformance is sustained	90% - <95% of courses reviewed in accordance with the Document Upkeep Plan during the month



'Requires Improvement' - interventions required	85% - <90% of courses reviewed in accordance with the Document Upkeep Plan during the month
'Inadequate' - major interventions or contractual rectification plans required	<85% of courses reviewed in accordance with the Document Upkeep Plan during the month

104.6. The Publishable Performance Information shall not constitute Commercially Sensitive Information or confidential information. Notwithstanding any other provision of this Contract, the Contractor hereby gives its consent for the Authority to publish to the general public the Publishable Performance Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of The Freedom of Information Act 2000 redacted). The Authority shall, prior to publication, consult with the Contractor 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.

104.7. The Contractor shall provide reasonable assistance assist and to co-operate with the Authority to enable the Authority to publish the Publishable Performance Information. The Authority shall publish the Publishable Performance 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 Contractor.

## **105. Sustainable Procurement**

105.1. The Contractor shall take all reasonable steps to ensure that all activities under this Contract shall comply with certified environmental management standards based on ISO14001 or an equivalent environmental management standard.

105.2. The Contractor shall take all reasonable steps to procure the observance of all UK Legislation applicable to Sustainable Procurement related to the subject matter or the execution of this Contract by any Contractor Employee, Sub-Contractor, agent or consultant authorised to act on behalf of the Contractor.

105.3. If the Contractor becomes aware of any prosecution or proceedings, for criminal breaches of any such UK Legislation applicable to Sustainable Procurement related to the subject matter or the execution of this Contract, against the Contractor, any Contractor Employee, Sub-Contractor, agent or consultant authorised to act on behalf of the Contractor, the Contractor shall immediately notify the Authority at the address specified in this Contract.

105.4. Any convictions during the period of this Contract for criminal breaches of any such UK Legislation applicable to Sustainable Procurement related to the subject matter or the execution of this Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a Contractor Default.

105.5. The Contractor shall include the dependencies for the Sustainable Procurement Objectives in the Contract risk register and in the risk management plan for this Contract, with appropriate review points.

105.6. The risk management plan shall include:

- a. the actions required to fulfil the Sustainable Procurement Objectives and the time-lines associated with such actions;
- b. reporting schedule on implementing the plan, as required by the Authority;
- c. an indication of any areas where the Authority and the Contractor will need to work together to enhance the sustainable delivery of this Contract;
- d. a schedule for joint audit and review of any Sustainable Procurement Key Performance Indicators contained in Schedule 12 (Performance Mechanism) by the Authority and the Contractor, as required by the Authority; and
- e. a flow-down of the plan and actions to Sub-Contractors where appropriate.

105.7. In order to satisfy the Authority that this Contract is being delivered in accordance with the Sustainable Procurement Objectives in the latest version of the Defence Sustainable Development Strategy, the Contractor shall work jointly with the Authority to develop Sustainable Development Key Performance Indicators and shall seek to agree a method of independent verification of these Sustainable Development Key Performance Indicators. Sustainable Development Key Performance Indicators arising from the delivery of the Training Services shall include but not be limited to the following:

- a. the rate of arising of reportable incidents under UK or (where appropriate) other equivalent Health and Safety Legislation.
- b. the Carbon Footprint of the provision of the Training Services; and
- c. the quantities of Surplus Material of all descriptions used in the delivery of the Training Services at prime or sub-tier level which are re-used, recycled or disposed of and the method of such disposal.

## **106. UK Import And Export Licences**

106.1. In this Clause, “foreign” shall be understood from the position of the Authority and be regarded as “non-UK”.

106.2. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

### **Obtaining a Licence or Authorisation from a Foreign Government – Contractor Obligations**

106.3. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the

Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

- a. ensure that when end use or end user restrictions, or both, apply to all or part of any Task Deliverable (which for the purposes of this Clause 106 shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
  - (1) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
  - (2) the end use as: For the Purposes of HM Government; and
- b. include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

106.4. If the Contractor or any Sub-Contractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Sub-Contractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Articles, components of Articles and software.

106.5. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.

#### Import and Export Licences

106.6. During the term of the Contract and for a period of up to 2 years from termination of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

- a. the Contractor shall, or procure that the Sub-Contractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within 5 working days to resolve the issue and should they fail the matter shall be escalated to an

appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and

- b. the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

106.7. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.

106.8. The Authority will reimburse the Contractor for any reasonable costs supported by documentary evidence, associated with Clauses 106.6 or 106.7 .

106.9. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each Sub-contract equivalent obligations to those set out in this Clause 106. Where it is not possible to include equivalent terms to those set out in this Clause 106, the Contractor shall report that fact and the circumstances to the Authority.

#### Obtaining a Licence or authorisation from a foreign government – Authority obligations

106.10. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.

106.11. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

#### Contractor obligation to provide information

106.12. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

- a. a non-UK export licence, authorisation or exemption; or
- b. any other related transfer or export control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Part 12.

106.13. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 106.12 (a) or (b), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 (set out in Schedule 28 to this contract) or other mutually agreed alternative format. Such notification shall be no later than 30 days of knowledge of any affected Contractor Deliverable and in any event such

notification shall be not less than 30 days prior to delivery of the Contractor Deliverables.

- 106.14. If the information to be provided under Clause 106.13 has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 106.13.
- 106.15. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 106.13 or 106.14 of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 106.16. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 106.13 or 106.14 of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 106.17. Where following receipt of materiel from a Sub-Contractor or any of its other suppliers restrictions are notified to the Contractor by that Sub-Contractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within 15 days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the Contractor within 15 days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
- 106.18. If the restrictions prevent the Contractor from performing its obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Schedule 4 (Change and Change Management) or to terminate the Contract. Except as set out in Clause 106.19, 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 that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to be determined under Clause 88 (Dispute Resolution Procedure).
- 106.19. In the event that the restrictions notified to the Authority pursuant to Clause 106.12 were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to Clause 106.15 or 106.17 were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 106.12, termination under

Clause 106.18 will be in accordance with Clause 65.3 and the provisions of Clause 106.23 will not apply.

Authority obligation to provide information

106.20. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as GFA. Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Training Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 106.12 above, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within 30 days of the date of knowledge and in any case not later than 30 days prior to the delivery of such materiel to the Contractor.

106.21. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than 30 days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

106.22. Where:

- a. restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clause 106.20 or 106.21 or both; or
- b. any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate,

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification of the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of Schedule 4 (Change and Change Management) and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of Clause 66 (Break).

Interim Position

106.23. Pending agreement of any amendment of the Contract as set out in Clause 106.18 or 106.22, provided the Contractor takes such steps as are reasonable to mitigate the impact the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

## **107. Trade Control Compliance**

- 107.1. The Authority shall provide all reasonable assistance, including the execution and/or delivery of any and all documents and information required from the Authority by any relevant Trade Control Laws or any Issuing Authority, necessary to allow the Contractor to obtain and maintain any and all licences applicable to the Contractor Controlled Items and/or, subject to the Authority's prior obligations pursuant to the Controlled Services.
- 107.2. Where the Authority is, pursuant to the terms of this Contract or otherwise to enable the Contractor to deliver the Services under this Contract, to provide any Items to the Contractor, the Authority shall use all reasonable endeavours to:
- a. give the Contractor prior written notice of any such Items which are Authority Controlled Items stating clearly:
    - (1) what the Authority Controlled Items are;
    - (2) any relevant classification number for each Authority Controlled Item controlled at a level higher than EAR99/AT if subject to U.S. law or specifically identified on applicable export control lists if not subject to U.S. law;
    - (3) the identity of the supplier of the Authority Controlled Items;
    - (4) the specific Trade Control Laws to which those Items are subject; and
    - (5) the identity of any applicable License under which the Authority Controlled Items will be Exported (including to employees and third parties); and
  - b. ensure that all necessary licences, including insofar as may be required to allow the Contractor (including the Contractor's affiliates, employees, officers, directors, agents and subcontractors) to provide the Training Services pursuant to this Contract, are in place in respect of the Authority Controlled Items prior to providing any such Authority Controlled Items to the Contractor;
  - c. clearly mark such Authority Controlled Items and any physical packaging or, where the Controlled Item is included within an email or other electronic media, the media including the Controlled Item as such, identifying the specific Trade Control Laws to which the Items are subject, prior to providing any such items to the Contractor so that such Authority Controlled Items are clearly identifiable by the Contractor; and
  - d. provide the other party with no less than 48 hours prior notice by email of any Controlled Items to be transferred to that party by email confirming that Clauses 107.2(b) and (c) have been complied with in relation thereto.
- 107.3. Unless otherwise directed by the Authority, the Contractor shall assume that there are no restrictions preventing the Contractor from handling and using Controlled Items provided by the Authority as Government Furnished Assets for the purposes of the Contractor performing the Contract.

Neither party shall knowingly do or omit to do anything which would:

- a. put the other party in breach of any applicable Trade Control Laws; or
- b. cause any licence maintained by the other in respect of any Controlled Item or Controlled Service necessary for the performance of their respective obligations under this Contract to be withdrawn by the relevant Issuing Authority or which would otherwise cause or result in a breach of the terms and conditions of a License by that party or any other party.

107.4. The obligations of the Contractor under this Contract, insofar as they may relate to or are dependent upon any Controlled Items or Services, are conditional upon and subject to the issuance by the relevant Issuing Authority of any necessary licences.

107.5. Any Items whether Controlled Items or not received by the Contractor from or on behalf of the Authority shall be used solely for and in accordance with the Contract but nothing else.

#### **108. Child Labour and Employment Law**

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

108.2. The Contractor agrees to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.



## **PART 18 DEFENCE REFORM ACT**

### **109. Qualifying Defence Contract**

109.1. The Authority has notified the Contractor that it believes that the Contract is a Qualifying Defence Contract for the purposes of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014.

### **110. Amendments to Qualifying Defence Contracts – Consolidated Versions**

110.1. For the purposes of this Clause:

- a. “consolidated version” means a version of the Contract which incorporates into the body of the Contract all amendments made to the Contract;
- b. “consolidated version date” means:
  - (1) where one or more consolidated versions have been issued, the date on which the latest consolidated version was issued, or
  - (2) where a consolidated version has not been issued, the date on which the Contract was entered into.

110.2. Where the Contract is amended in accordance with Clause 101

- a. on five (5) occasions since the consolidated version date;
- b. so as to change by more than 5% the Contract Price from the Contract Price at the consolidated version date, whether by one or more amendment; or
- c. otherwise in a way which the Authority considers to be a significant change the Contract,

the Authority shall issue to the Contractor, within 28 calendar days of agreeing the relevant amendment, a consolidated version.

110.3. The consolidated version issued in accordance with Clause 110.2 shall incorporate only amendments previously agreed between the parties in accordance with Clause 101 Contract Amendments and shall be signed on behalf of the Authority.

110.4. The Contractor shall, within 14 calendar days of receiving it:

- a. sign and return to the Authority a copy of the consolidated version issued in accordance with to Clause 110.2, to confirm that it properly incorporates all amendments made to the Contract; or
- b. notify the Authority in writing why it believes that the consolidated version does not properly incorporate all amendments made to the Contract.

110.5. Following any notification made by the Contractor under Clause 110.4.b, the Authority and the Contractor shall seek to reach agreement on the content of the consolidated version, in the absence of which the matter may be resolved through the appropriate Dispute Resolution procedure.

110.6. Within 14 calendar days of the parties reaching agreement or the matter being determined through a dispute resolution procedure, the Authority shall reissue

a signed consolidated version which accords with that agreement or determination and which the Contractor shall sign and return to the Authority within 14 calendar days of receiving it.

#### **111. Open Book on Sub-Contracts that are not Qualifying Sub-Contracts**

111.1. In this Condition the following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

- a. “Group undertaking” has the meaning given by section 1161 of the Companies Act 2006.
- b. “Material Single Source Sub-contract (Non-Qualifying)” means a sub-contract entered into by the Contractor where:
  - (1) the sub-contract is entered into at the same time as, or after, the Contract was entered into;
  - (2) the sub-contract is entered into for the purposes of the Contract;
  - (3) the award of the sub-contract is not the result of a “competitive process” as defined in Regulation 59 of the Single Source Contract Regulations 2014 (SSCR) for Qualifying Sub-contracts (QSC);
  - (4) the value of the sub-contract is of, or above £1,000,000;
  - (5) at least 50% of the sub-contract (by value) is required either to enable performance of the Contract or to enable the combined performance of the Contract and any other Qualifying Defence Contract (QDC), or prospective contract, under the SSCR, to which the Contractor or any group undertaking of the Contractor is a party, or might become a party; and
  - (6) the sub-contract is not a QSC as defined in the SSCR.

111.2. Except where the Authority expressly agrees otherwise in writing, the Contractor shall use reasonable endeavours to include in any Material Single Source Sub-contract (Non-Qualifying) the terms specified in Schedule 36 (Provisions To Be Included In Qualifying Sub-contracts) to this Contract (inserting relevant party names and / or Definitions where appropriate).

111.3. Before entering into a Material Single Source Sub-contract (Non-Qualifying) the Contractor shall promptly notify the Authority where it is unable to include the terms specified in Schedule 36 (Provisions To Be Included In Qualifying Sub-contracts), or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-Contract.

#### **112. Confidentiality of Single Source Contract Regulations Information**

112.1. In this Clause 112, the following words and expressions shall have the meaning given to them, except where the context requires a different meaning:

“Single Source Contract Regulations Information” and “SSCR Information” means any confidential information in any written or other tangible form, which relates to the contract disclosed by the Contractor to the Authority or obtained by the Authority, and being of a type specified in Regulation 56 (1) (but not including information described in Regulation 56 (3)(h) to (n)) of the Single Source Contract

Regulations 2014 (SSCR), relating to the Contract. It shall not include information that:

- a. is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Government Department, or the professional advisors or consultants of the Authority, in breach of the provisions of the Contract, the Defence Reform Act 2014 (DRA), the SSCR or of any other obligation of confidence owed to the party to whom the information relates;
- b. was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Contractor or otherwise prohibited from disclosing the information to the Authority;
- c. was lawfully in the possession of the Authority before the information was disclosed to it by the Contractor; or
- d. the parties agree in writing is not confidential or may be disclosed.

112.2. The Authority shall keep SSCR Information confidential and, except with the prior written consent of the Contractor, shall not disclose or make available the SSCR Information in whole or in part to any person, except as expressly permitted by this Clause 112.

112.3. The Authority may disclose the SSCR Information in all circumstances which would be permitted disclosures under section 5 (1) of Schedule 5 of the DRA.

112.4. Where the Authority discloses SSCR Information to any Government Department under Clause 112.3, the Authority shall ensure that the recipient of the SSCR Information is made aware of and asked to respect its confidentiality.

112.5. Where the Authority discloses SSCR Information to its professional advisors or consultants under Clause 112.3, the Authority shall inform them of the confidential nature of the SSCR Information before disclosure and shall obtain from them enforceable obligations to keep the SSCR Information confidential in terms at least as extensive and binding on them as the terms of this Condition are on the Authority.

112.6. To the extent permitted by the time for compliance under the FOI Legislation, the Authority shall consult the Contractor where the Authority is considering the disclosure of SSCR Information under the FOIA, and, in any event, shall provide prior notification to the Contractor of any decision to disclose the SSCR Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose SSCR Information in order to comply with the FOIA is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA. For the avoidance of doubt, nothing in this Condition shall affect the Contractor's rights at law.

112.7. If, for the purposes of this Contract, the Contractor enters into a Sub-Contract which it has assessed to be a Qualifying Sub-Contract for the purpose of the DRA and SSCR, it shall include in that sub-contract the terms set out in Schedule 36 (Provisions To Be Included In Qualifying Sub-contracts) to this Contract (inserting relevant party names and / or Definitions where appropriate).

112.8. The obligations set out in this Clause 112 shall be the Authority's sole contractual obligations of confidentiality regarding the SSCR Information. Any other provision of the Contract relating to the confidentiality of information provided under or in connection with the Contract, including but not limited to Clause 60 (Disclosure of Information), shall be construed in such a way as to exclude the SSCR Information from their application.

112.9. Nothing in this Clause 112 shall affect the Authority's obligations of confidentiality where information is disclosed orally in confidence.

### **113. Qualify Defence Contract (QDC) Reporting Requirements**

113.1. The Contractor shall comply with the Qualify Defence Contract Reporting Requirements set out in Schedule 34 (Qualifying Defence Contract Reporting Requirements).