

**PART 4 - OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT – OPTION C**

11.2.22 Number not used.

11.2.23 Number not used.

11.2.25 Number not used.

11.2.27 Number not used.

11.2.28 Number not used.

11.2.29 Number not used.

11.2.30 Number not used.

11.2.33 Insert new definitions:

“Access” means communication with the SDE by Users, including Loading and Retrieval of Information.

“Archive” means the off-line storage of Data in such a manner that it is not Retrievable by Users and may include storage outside of the SDE.

“Article” for the purpose of Clause 22C means part or the whole of any article which the *Contractor* is required under the contract to supply or in connection with which they are required under the contract to carry out any service and any other article or part thereof to the same design as that article or any Modification of that design made in the exercise of rights granted under this Clause.

“Articles” means all goods, including Plant and Materials (excluding Services) which the *Contractor* is required under the contract to supply, including the System, Equipment and Infrastructure as set out in the Scope.

“Arms” means any weapon, which, for the avoidance of doubt, excludes anything to be used for the purpose of performing the contract.

“Asbestos” shall have the same meaning as “asbestos” defined in Regulation 2 of the Control of Asbestos Regulations 2012 (COAR).

“Associated Company” means any:

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

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"Authority to Deploy" means the *Client's* formal written authority for the *Contractor* to Deploy.

"Best Environmental Practice" means the practice generally as followed by contractors skilled and experienced in the remediation and redevelopment of contaminated sites and shall be deemed to include (as a minimum) compliance with all Environmental Laws.

"BIM" means Building Information Modelling as provided in the Scope.

"DREAM Requirements" means the *Client's* Defence Related Environmental Assessment Methodology to attain a DREAM rating of excellent.

"Built Asset Security Information Requirements" (BASIR) means the information provided by the *Client* in relation to security information for specific built assets.

"Business day" means any day excluding:

- Saturdays, Sundays and public and statutory holidays in the jurisdiction of either party
- privilege days notified in writing by the *Client* to the *Contractor* at least 10 Business Days in advance; and
- such periods of holiday closure of the *Contractor's* premises of which the *Client* is given written notice by the *Contractor* at least 10 Business Days in advance.

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- Government Department,
- Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal),
- Non-Ministerial Department; or
- Executive Agency.

"Child Labour Legislation" means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the *Contractor* in the jurisdiction(s) in which it performs the contract.

"*Client* Confidential Information" is all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the *Client*, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it

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is marked "confidential") or which ought reasonably be considered to be confidential.

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

- supplied to the *Contractor* by or on behalf of the *Client*; or
- which the *Contractor* is required to generate, process, store or transmit pursuant to this contract; or
- any Personal Data for which the *Client* is the Data Controller to the extent that such Personal Data is held or processed by the *Contractor*.

“Commercially Sensitive Information” is the information agreed between the parties (if any) comprising the information of a commercially sensitive nature relating to the *Contractor*, the charges for the works, its IPR or its business or which the *Contractor* has indicated to the *Client* that, if disclosed by the *Client*, would cause the *Contractor* significant commercial disadvantage or material financial loss.

“Commercial Officer” means the authority so designated in the contract.

“Confidential Information” is the *Client’s* Confidential Information and/or the *Contractor’s* Confidential Information.

“Contractor’s Employees” means those employees of the *Contractor*, being UK nationals and TCNs, but excluding LRWs, who are Deployed in connection with the performance of the contract.

“Contract Data Requirement” means a data requirement referred to in the Schedule of Requirements the format and content of which is set out or referenced in DEFFORM 315.

“Contract Period” means the term of the contract commencing on the commencement date of the Contract (the ‘Commencement Date’) and terminating on the earlier of (a) the date on which the contract terminates early in accordance with its terms and (b) its expiry date.

“Contract Price” means the price exclusive of Value Added Tax, payable to the *Contractor* by the *Client* under the contract for the full and proper performance by the *Contractor* of his part of the contract as determined under the provisions of the contract.

“Contracting Body” is any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the *Client*.

“*Contractor*” means the person who, by the contract, undertakes to supply the Articles, or perform the Service, or both for the *Client* as is provided by the contract. Where the *Contractor* is an individual or a partnership, the expression shall include the personal representatives of the individual or of

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the partners, as the case may be, and the expression shall also include any person to whom the benefit of the contract may be assigned by the *Contractor* with the consent of the *Client*.

“*Contractor Sensitive Information*” means the information listed in the DEFFORM 539A (Part 6, Schedule 8 of this contract), being information notified by the *Contractor* to the *Client*, which is acknowledged by the *Client* as being sensitive, at the point at which the contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;

“*Contractor Deliverables*” means the works, goods and / or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the *Contractor* is required to provide under the contract.

“*Contractor's Confidential Information*” is any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the *Contractor*, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

“*Contractor Personnel*” means all directors, officers, employees, agents, consultants and contractors of the *Contractor* and/or of any *Subcontractor* engaged in the performance of its obligations under the contract.

“*Contractor's Representative(s)*” shall be deemed to include the *Contractor's* employees, agents and subcontractors.

“COTS” means commercial off the shelf.

“CPET” means the UK Government's Central Point of Expertise for Timber.

“Crown Body” is any department, office or agency of the Crown.

“Crown Use” in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949.

“CSM Risk Assessment Process” means the risk assessment process that forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this contract and any *Sub-contract*.

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

“Cyber Implementation Plan” means the plan referred to in Clause 28A.2 of this Clause;

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“Cyber Risk Level” means the level of Cyber Risk relating to this contract or any *Sub-contract* assessed in accordance with the Cyber Security Model.

“Cyber Risk Profile” means the level of cyber risk relating to this contract assessed by the *Client* or in relation to any *Sub-contract* assessed by the *Contractor*, in each case in accordance with the Cyber Security Model;

“Cyber Security Implementation Plan” means the plan referred to in Clause 3 of this Clause including but not limited to any risk-balance case and mitigation measures required by the *Client*.

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

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

“Cyber Security Instructions” means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this contract issued by the *Client* to the *Contractor*.

“Cyber Security Model” and “CSM” mean the process by which the *Client* ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire.

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

“Data Controller” has the meaning given to it in the Data Protection Act 2018.

“Data Loss Event” means any event that results in unauthorised access to Personal Data held by the *Contractor* under this contract, and/or actual loss and/or destruction of Personal Data in breach of the contract, including any Personal Data Breach.

“Data Protection Legislation” means:

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- all applicable Laws in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

- a) UK GDPR
- b) DPA 2018; and
- c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended,

- each to the extent that it relates to the processing of personal data and privacy;

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Subject Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Deploy” means bringing the *Contractor*, the Contractor’s Employees, its Subcontractors and the Subcontractor’s Employees under the administration and control of the *Client*, which will take place on:

- entering a Government Establishment for transit to the CAA; or
- entering the CAA at the nominated entry point; or
- reporting to the Representative of the *Client* when already in the CAA.

“DPA 2018” means the Data Protection Act 2018.

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

“Defence Sourcing Portal” means the Defence Sourcing Portal accessible at <https://www.contracts.mod.uk/> or any replacement thereof for the government procurement opportunities in the defence sector;

“Design right” has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988 (Clause 22A).

“Disaster” means a significant unplanned event which causes the SDE to be unavailable or which causes the Data to be corrupted, lost, or unavailable.

“Document” means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Contractor* in relation to this contract.

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“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

- tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- provide prescribed information on those arrangements or proposals within set time limits as:
  - contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as
  - extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

“Electronic Information Sharing Agreement (EISA)” means the agreement (in the form of DEFFORM 687C) in respect of the Project to which each prospective User must be a party before Access is granted to that User.

“Expunge” means the removal of Data from the SDE whilst ensuring that a record of its existence is maintained in the Log.

“Unique Package Identifier” and “EUPI” means an identifier generated for contractor logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the *Client* and the second part being the identifier generated by the *Contractor*.

“Electronic Information” means all information generated, processed, transferred or otherwise dealt with under or in connection with the contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network.

“Employee” shall include any person who is an employee or director of the *Contractor* or who occupies the position of a director of the *Contractor*, by whatever title given.

“Environment” means all and any of the following media being water, air (wherever situate) as well as humans and their property, plants, animals and eco-systems.

“Environmental Information Regulations” is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.

“Environmental Laws” all or any applicable law including common law, statute, civil code, statutory guidance or by-law in each case which has as its purpose or effect the protection of the Environment.

“Evidence” means either:

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- an invoice or delivery note from the timber supplier or *Subcontractor* to the *Contractor* specifying that the product supplied to the *Client* is Forest Stewardship Council FSC or Programme for the Endorsement of Forest Certification PEFC certified; or
- other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET.

“Expected Work Locations” means the locations in the CAA specified in the contract.

“Expected Modes of Transport” means the modes of transport to be used in the CAA for the transportation of the *Contractor*, the Contractor’s Employees, its Subcontractors, the Subcontractor’s Employees and LRWs specified in the contract.

“Fidelity” means the extent to which the SDE System maintains Data without corruption or disturbance to its content as it is processed as required by the SDE SOR.

“Financial Management Information” means the value of work completed at a given point in time.

“Firm Price” means a price, agreed for the Articles or Services, or both, which is not subject to variation.

“Fixed Price” means a price, agreed for the Articles or Services, or both, that is subject to variation in accordance with the variation of price provisions of the contract.

“FLEGT” means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging.

“FOIA” is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“For the Services of the United Kingdom Government” means anything done in relation to Articles owned or used by the *Client*, under the authority of, or to the order of, a Minister of the Crown in pursuance of authority vested in the Minister by Parliament.

“General Anti-Abuse Rule” means:

- the legislation in Part 5 of the Finance Act 2013; and
- any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

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The following expressions shall have the same meanings as in Article 4 of the GDPR:

- Controller;
- Processor;
- Data Subject;
- Personal Data;
- Personal Data Breach; and
- Data Protection Officer.

“Good Industry Practice” means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances.

“Government Establishment” or “site” shall be deemed to include any owned or operated site by HM Government including Her Majesty's Ships or Vessels and Service Stations.

“Government Furnished Assets” and “GFA” means a generic term for any MOD asset such as equipment, information or resources issued or made available to the *Contractor* in connection with the contract by or on behalf of the *Client*.

“Government Furnished Equipment” and “GFE” means a generic term for materiel loaned to a contractor. These are tangible items that the contractor must manage and account for. GFE consists of: (1) Jigs, Tools and Test Equipment (JTTE) is plant and equipment, jigs, tools, gauges, test equipment, moulds and dies required for production. The MOD may agree to fund the purchase of JTTE by the contractor where it is specific to the contract. Clause 27L covers management of JTTE. The RFQ (ITT) should identify whether the tenderer needs to procure JTTE.

“Government Furnished Facilities” and “GFF” means buildings, parts of buildings, sites and other infrastructure issued or made available to the *Contractor* in connection with the contract by or on behalf of the *Client*.

“Government Furnished Information” and “GFI” means information or data issued or made available to the *Contractor* in connection with the contract by or on behalf of the *Client*.

“Government Furnished Resource” and “GFR” means MOD personnel loaned to the *Contractor* in connection with the contract by or on behalf of the *Client*.

“GovS 007: Security” means the Government Functional Standard GovS 007: Security relating to the government's expectations for protecting:

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- the government's people, information and assets;
- visitors to government property, and third-party suppliers while engaged on government business; and
- citizen data.

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others.

"Independent Verification" means that an evaluation is undertaken and reported by an individual or body:

- whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent"; and
- who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to "ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent".

"Information" means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the contract, including information provided in the tender or negotiations which preceded the award of the contract (including information in connection with EISA – Clause 27F).

"Information" for the purpose of Clause 22C, 22D and 22E means technical data relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software for which the *Client* is otherwise licensed).

"Integrity" means the extent to which the SDE System safeguards and properly processes Data as required by the SDE SOR.

"Intellectual Property" includes patents, registered designs, design rights, topography rights, copyright, database rights and other rights in Information.

"Intellectual Property Rights" or "IPRs" is:

- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

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- all other rights having equivalent or similar effect in any country or jurisdiction.

“International Labour Law Conventions” means the United Nations Convention of International Labour.

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

“Issued Property” means any item of Government Furnished Equipment, including any Articles in connection with which the *Contractor* is required under the contract to carry out any Service, issued or otherwise furnished to the *Contractor* in connection with the contract by or on behalf of the *Client*.

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

“Law” is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the *Contractor* is bound to comply.

“Legal and Sustainable” means production and process methods, also referred to as timber production standards, as defined by the document titled “UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement”. The edition current on the day the *Client* issued the contract documents shall apply.

“Load” means to place Information on the SDE to make it accessible to the SDE such that it can be Retrieved by one or more Users.

“Log” means the record of communication with the SDE involving Access.

“Loss” includes damage or destruction.

“Local Military Commander” means the senior UK military person within a specific geographical area who is responsible for discipline, security and administration of that area and who for the purposes of this Clause shall be a Representative of the *Client*.

“LRWs” means Locally Recruited Workers, being workers who are engaged either by the *Contractor* or by its Subcontractors and who normally reside in the country or countries in which the contracted Services are being performed.

“Main Terms” means the terms that govern the entirety of the contract.

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“Materiel” is a generic term meaning equipment (including fixed assets), stores, supplies and spares unless otherwise defined in this contract where that definition will apply.

“Modification” for the purpose of Clause 22C means a change to the build standard of an Article and the expressions 'to Modify' and 'Modified' shall be interpreted accordingly.

“MOD Identifiable Information” means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure.

“Month” means calendar month;

“Notices” means all notices, orders, or other forms of communication required to be given in writing.

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

“Occasion Of Tax Non-Compliance (OOTNC)” means:

- any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
  - a Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - the failure of an avoidance scheme which the *Contractor* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
- any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date this contract came into effect or to a civil penalty for fraud or evasion.

“Officer in Charge” shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Heads of Government Establishments.

"Operations" means any military action or the carrying out of any strategic, operational, tactical, service, training or administrative military mission or the process of carrying on combat including any movement, supply, attack,

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defence and manoeuvre needed to gain the objectives of any battle or campaign.

“OSI” means Operation Specific Information, being information specific to the CAA.

“Parent Company Guarantee” means the parent company guarantee provided or to be provided by the *Contractor’s* ultimate holding company for both part 1 (this contract) and part 2 of the Project to which this contract and the Works relate.

“Peculiar” parts are those designed specifically for the equipment concerned and having no other application.

“Person” includes any legal or natural person or persons.

“Personal Data” has the meaning given to it in the Data Protection Act 2018.

“Personnel” All employees, agents, Contractor’s and Subcontractors of either party as the case may be.

“PJOB” means a Permanent Joint Operating Base.

“procure” shall be interpreted as requiring the *Contractor* to use all reasonable efforts to cause the occurrence of the event or outcome concerned, provided that the *Contractor* shall remain responsible to the *Client* to the full extent of its obligation in relation to that event or outcome if that event or occurrence does not occur. (Clause 17A).

“Prohibited Act” is:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or other Contracting Body or any other public body a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
- c) committing any offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act),
  - ii) under legislation or common law concerning fraudulent acts; or

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- iii) defrauding, attempting to defraud or conspiring to defraud the *Client*; or

any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

“Project Implementation” means all activities conducted for the purpose of implementing the Project.

“Project Manager” and “Equipment Support Manager” mean the authority so designated in the contract.

“Proprietary” parts are those for which the design rights are not held or shared by the *Client*. For the purposes of this procedure, lists of proprietary parts shall include the actual manufacturer’s name address and part number, in addition to any reference allocated by the *Contractor*.

“Protective Measures” means appropriate technical and organisational measures which may include (as appropriate):

- pseudonymising and encrypting Personal Data;
- ensuring confidentiality, integrity, availability and resilience of systems and services;
- ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- regularly assessing and evaluating the effectiveness of such measures adopted by it, including those set out in DEFFORM 532 (Part 6, Schedule 7 of this contract).

“Public Store Account (PSA)” means the primary record for accounting for receipts, usage and disposal or return of GFE of all loan types held under contract. The PSA may be a manual stock-record-card system or a computer system consistent with the contractor’s normal accounting system.

“Publishable Performance Information” means any of the information in the DEFFORM 539B KPI Data Report as it relates to a Key Performance Indicator where it is expressed as publishable in the table in DEFFORM 539B which shall not contain any information which is exempt from disclosure which shall be determined by the *Client*; and which shall not constitute Sensitive Information;

“Recycled Timber” means recovered wood that prior to being supplied to the *Client* had an end use as a standalone object or as part of a structure. Recycled Timber covers:

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- Pre consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the category of Virgin Timber,
- Post consumer reclaimed wood and wood fibre, and driftwood,
- Reclaimed timber abandoned or confiscated at least ten years previously.

“Regulations” means the Public Contracts Regulations (SI 2015/108) as amended, extended, re-enacted or replaced from time to time and ‘Regulation’ means any one of them or (as the case may be) any specified provision of the Regulations.

“Regulations” for the purpose of Clause 26.9 means the Defence and Security Public Contracts Regulations (SI 2011/1848) as amended, extended, re-enacted or replaced from time to time and ‘Regulation’ means any one of them or (as the case may be) any specified provision of the Regulations; and

“Relevant day” means the day which is thirty (30) calendar days after the relevant assessment date as detailed in Clause 50.1.

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

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Contractor* is established.

“Representative of the *Client*” in any Clause of the contract means the person duly authorised by the *Client* to act for the purposes of the provision and identified in the contract or in any subsequent notice to act for the purposes of the provision.

“Request for Information” is a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.

“Repair and Maintenance” means activity to maintain Articles in an operable condition including:

- maintenance of records of defects and reliability;
- the identification of replacements for Articles that become obsolete;
- the preparation and application of procedures and arrangements (including safety procedures) for removing Articles from and re-installing them in an operational system,

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and for handling, storing, transporting, packaging and labelling Articles;

- inspection and testing of Articles to check calibration and performance and to detect and identify faults;
- dismantling Articles;
- preparation and application of repair schemes;
- reassembling Articles after repair, or incorporation of modifications, including the incorporation of replacement or new parts;
- testing and calibrating of Articles prior to, during or after re-assembly and after reinstallation in an operational system;
- reworking or reconditioning of Articles;

but excluding redesign or manufacture of any replacement or new parts, or the design of any modification.

“Reporting Date” means 31 March (or such alternative date agreed between the parties (acting reasonably) in writing having regard for the end date of the Contractor’s financial year) each year of the Contract Period.

“Retrieve” means retrieval of Information or other communication with the SDE other than Loading.

“Revenue” means the aggregate revenue (excluding VAT and before the application of any deduction, set-off or other remedy) that the *Contractor* has received under the contract with the *Client*.

“Schedule of Requirements” means that part of the contract which identifies, either directly or by reference, the Articles, Services or contract Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Article, Service or contract Deliverable;

“Scope” has the same meaning as under NEC4 Engineering and Construction contract.”.

“Security Policy Framework” means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

“Services” means all services (excluding the supply of Articles) which the *Contractor* is required under the contract to perform or to fulfil.

“Service Administrator” means the individual appointed by the *Contractor* to administer the SDE Service.

“Shared Data Environment (SDE)” means the SDE System together with:

- Information Accessed via the SDE System, and

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- any part of the computer and software infrastructure which is controlled by a User other than the *Contractor*;

“Shared Data Environment Service (SDE Service)” means the SDE Service specified in the SDE SOR, including the provision of an SDE System by means of which Information may be Accessed.

“Shared Data Environment System (SDE System)” means the computer and software infrastructure required for the SDE Service including the computer systems, networks, software, business processes and rules but excluding:

- Information Accessed via that infrastructure, and
- Any part of the computer and software infrastructure which is controlled by a User other than the *Contractor*.

“Short-Rotation Coppice” means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy.

“Sites” means any premises from which *Contractor* Deliverables are provided in connection with this contract or from which the *Contractor* or any relevant *Subcontractor* manages, organises or otherwise directs the provision or the use of the *Contractor* Deliverables and/or any sites from which the *Contractor* or any relevant *Subcontractor* generates, processes, stores or transmits MOD Identifiable Information in relation to this contract.

“SME” means Small and Medium-sized Enterprise, an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

“*Sub-contract*” means any *Sub-contract* at any level of the supply chain, whether awarded directly by the *Contractor* or indirectly by any lower tier *Subcontractor* or Associated Company, which is entered into as a consequence of or in connection with this contract. For the purpose of Clause 26.9, where the aggregate price and/or any other consideration (in each case excluding VAT and before the application of any deduction, set-off or other remedy) payable by the *Contractor* under that *Sub-contract* or purchase order is or is reasonably estimated to be greater than the sum of £200,000 (two hundred thousand pounds sterling)

“*Subcontractor*” means any *Subcontractor* engaged by the *Contractor* or by any other *Subcontractor* of the *Contractor* at any level of subcontracting to provide *Contractor* Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this contract and ‘*Sub-contract*’ shall be interpreted accordingly.

“*Sub-contract* Revenue” means the aggregate revenue (excluding VAT and before the application of any deduction, set-off or other remedy) that any *Subcontractor* has been paid by the *Contractor* under a *Sub-contract*.

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“Sub-processor” means any third Party appointed to process Personal Data on behalf of the *Contractor* related to the contract.

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

“TCN” means third country national, being an individual who is not a UK national.

“Timber and Wood-Derived Products” means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element.

“Transparency Information” means the content of the contract in its entirety, including from time to time agreed changes to the contract, except for (i) any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), which shall be determined by the *Client*, and (ii) any Sensitive Information.

“Timber policy” means the timber requirements to be complied with in line with the Government Procurement Policy.

“Unique Identifier” means is a numeric or alphanumeric string that is associated with a single entity within a given system.

“UK GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

The following expressions shall have the same meanings as in Article 4 of the UK GDPR:

- Controller;
- Processor;
- Data Subject;
- Personal Data;
- Personal Data Breach; and
- Data Protection Officer.

“Unique Order Identifier” and “UOI” are identifiers generated by the Contracting, Purchasing & Finance (CP&F) electronic procurement tool for non inventory purchase orders.

“Unique Receipt Reference Identifier” and “URRI” are identifiers generated by CP&F for inventory purchase orders.

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“User” means a party to the EISA.

“User Protocol” means the document that is appended to the EISA and which describes the overall architecture of the SDE, including the elements provided by the *Contractor* and those provided by other Users, the shared business processes, Information management arrangements, technical interface requirements and administrative procedures necessary for Users to operate effectively within the SDE.

“VCSE” means Voluntary, Community and Social Enterprise, a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

“Virgin Timber” means Timber and Wood-Derived Products that do not include Recycled Timber.

12.2 Renumber this paragraph as 12.2.1.

12.2.1 After Clause 12.2.1, insert a new Clause 12.2.2:

“12.2.2 Each Party hereby warrants to each other that entry into the contract does not and performance thereof will not in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and that the contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.”

12.5 Insert new Clause 12.5:

“12.5 References to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation, or instrument as amended or consolidated by any subsequent enactment, order, regulation, or instrument.”

12.6 Insert new Clause 12.6

“12.6 The heading to any contract condition shall not affect the interpretation of that condition.”

12.7 Insert new Clause 12.7

“12.7 Any decision, act, or thing which the *Client* is required or authorised to take or do under the contract may be taken or done only by any person authorised, either generally or specifically, by the *Client* to take or do that decision, act, or thing on behalf of the *Client*.”

12.8 Insert New Clause 12.8

“12.8 Unless excluded within the terms of the contract or where required by law:

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a. references to submission of documents in writing shall include electronic submission; and

b. any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as agreed between the parties is employed and the agreed method recorded in the contract.”

13.9 Insert new Clause 13.9:

### **“Notices**

13.9.1 Notices under or in connection with this contract shall be:

13.9.1.1 given in writing;

13.9.1.2 authenticated by signature or by such other method as agreed between the parties;

13.9.1.3 marked for the attention of the appropriate department or officer; and

13.9.1.4 marked in a prominent position with the relevant contract number.

13.9.2 Notices should be delivered by:

13.9.2.1 hand;

13.9.2.2 first-class prepaid post (or airmail, in the case of Notices to or from overseas);

13.9.2.3 facsimile;

13.9.2.4 telex; or

13.9.2.5 electronic mail, where such a means of communication has been agreed for the purposes of the contract

13.9.3 Notices shall be deemed to have been received:

13.9.3.1 if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;

13.9.3.2 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;

13.9.3.3 if sent by facsimile, telex or other electronic means;

i. if transmitted between 09.00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

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- ii. if transmitted at any other time, at 09.00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

13.9.4 The addresses (including electronic addresses) of each party to the contract to which all Notices shall be sent are those specified in the contract, or such other address as either party may by written Notice specify to the other for the purpose of this Clause.

13.9.5 Where either party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.”

13.10 Insert a new Clause 13.10:

### “Formal amendments to the contract

#### General

13.10.1 Subject to Clause 13.10.3, the contract may only be amended by the written agreement of the parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:

13.10.1.1 *Client* Notice of Change under Clause 13.11 (where used);

13.10.1.2 the *Client's* offer set out in a serially numbered amendment letter issued by the *Client* to the *Contractor*; and

13.10.1.3 the Contractor's unqualified acceptance of such offer as evidenced by the Contractor's duly signed DEFFORM 10B (Part 6, Schedule 1 of this contract).

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

#### Changes to the Scope

13.10.4 For the purposes of the contract "the Scope" shall include any document or item which, individually or collectively, is referenced in the Schedule of Requirements. The Scope forms part of the contract and all *Contractor* Deliverables to be supplied by the *Contractor* under the contract shall conform in all respects with the Scope.

13.10.5 The *Contractor* shall use a configuration control system to control all changes to the Scope. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the contract.”

Insert a new Clause 13.11:

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## **“Contract Change Control Procedure**

### ***Client* Changes**

- 13.11.1 The *Client* shall be entitled to propose any change to the contract (a "Change") or (subject to Clause 13.11.2) Changes in accordance with this Clause.
- 13.11.2 Nothing in this Clause shall operate to prevent the *Client* from specifying more than one Change in any single proposal, provided that such changes are related to the same or similar matter or matters.

### **Notice of Change**

- 13.11.3 If the *Client* wishes to propose a Change or Changes, it shall serve a written notice (an "*Client* Notice of Change") on the *Contractor*.
- 13.11.4 The *Client* Notice of Change shall set out the Change(s) proposed by the *Client* in sufficient detail to enable the *Contractor* to provide a written proposal (a "*Contractor* Change Proposal") in accordance with Clauses 13.11.7 to 13.11.9 (inclusive).
- 13.11.5 The *Contractor* may only refuse to implement a Change or Changes proposed by the *Client*, if such change(s):
- 13.11.5.1 would, if implemented, require the *Contractor* to deliver any *Contractor* Deliverables under the contract in a manner that infringes any applicable law relevant to such delivery; and/or
- 13.11.5.2 would, if implemented, cause any existing consent obtained by or on behalf of the *Contractor* in connection with their obligations under the contract to be revoked (or would require a new necessary consent to be obtained to implement the Change(s) which, after using reasonable efforts, the *Contractor* has been unable to obtain or procure and reasonably believes it will be unable to obtain or procure using reasonable efforts); and/or
- 13.11.5.3 would, if implemented, materially change the nature and scope of the requirement (including its risk profile) under the contract; and:
- 13.11.5.4 the *Contractor* notifies the *Client* within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after the date of the *Client* Notice of Change that the relevant proposed Change or Changes is/are a Change(s) falling within the scope of Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3 providing written evidence for the *Contractor*'s reasoning on the matter; and
- 13.11.5.5 further to such notification:
- a. either the *Client* notifies the *Contractor* in writing that the *Client* agrees, or (where the *Client* (acting reasonably) notifies the *Contractor* that the *Client* disputes the *Contractor*'s notice under Clause 13.11.5.4) it is determined in accordance with Clause 9 of this contract, that the relevant Change(s) is/are

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a Change(s) falling within the scope of Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3; and

b. (where the *Client* either agrees or it is so determined that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 13.11.5.1, 13.11.5.2. and/or 13.11.5.3) the *Client* fails to make sufficient adjustments to the relevant *Client* Notice of Change (and issue a revised *Client* Notice of Change) to remove the Contractor's grounds for refusing to implement the relevant Change under Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3 within 10 (ten) Business Days (or such longer period as shall have been agreed in writing by the parties) after:

(1) the date on which the *Client* notifies in writing the *Contractor* that the *Client* agrees that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3); or

(2) the date of such determination.

13.11.6 The *Contractor* shall at all times act reasonably, and shall not seek to raise unreasonable objections, in respect of any such adjustment.

### **Contractor Change Proposal**

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

13.11.7.1 (where the *Contractor* has not notified the *Client* that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3); in accordance with Clause 13.11.5) fifteen (15) Business Days (or such other period as the Parties agree (acting reasonably) having regard to the nature of the Change(s)) after the date on which the *Contractor* shall have received the *Client* Notice of Change; or

13.11.7.2 (where the *Contractor* has notified the *Client* that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3 in accordance with Clause 13.11.5 and:

a. the *Client* has agreed with the Contractor's conclusion so notified or it is determined under Clause 9 of this contract that the relevant Change(s) is/are a Change(s) falling within the scope of Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3 and the *Client* has made sufficient adjustments to the relevant *Client* Notice of Change (and issued a revised *Client* Notice of Change(s)) to remove the Contractor's grounds for refusing to implement the relevant Change(s) under Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3) fifteen (15) Business Days (or such other period as the parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date on which the *Contractor* shall have received such revised *Client* Notice of Change; or

b. the *Client* has disputed such conclusion and it has been determined in accordance with Clause 9 of this contract that the relevant Change(s) is/are not a Change(s) falling within the scope of Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3 fifteen (15) Business Days (or such other period as the

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parties shall have agreed (both parties acting reasonably) having regard to the nature of the Change(s)) after the date of such determination, the *Contractor* shall deliver to the *Client* a *Contractor* Change Proposal. For the avoidance of doubt, the *Contractor* shall not be obliged to deliver to the *Client* a *Contractor* Change Proposal where the *Contractor* notifies the *Client*, and the *Client* agrees or it is determined further to such notification in accordance with Clause 13.11.5, that the relevant Change or Changes is/are a Change(s) falling within the scope of Clauses 13.11.5.1, 13.11.5.2 and/or 13.11.5.3.

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

13.11.8.1 the effect of the Change(s) on the *Contractor*'s obligations under the contract;

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

13.11.8.3 the programme for implementing the Change(s);

13.11.8.4 any amendment required to this contract as a result of the Change(s), including, where appropriate, to the Contract Price; and

13.11.8.5 such other information as the *Client* may reasonably require.

13.11.9 The price for any Change(s) shall be based on the prices (including rates) already agreed for the contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change(s).

### **Contractor Change Proposal – Process and Implementation**

13.11.10 As soon as practicable after the *Client* receives a *Contractor* Change Proposal, the *Client* shall:

13.11.10.1 evaluate the *Contractor* Change Proposal; and

13.11.10.2 where necessary, discuss with the *Contractor* any issues arising (and (in relation to a Change(s) proposed by the *Client*) following such discussions the *Client* may modify the *Client* Notice of Change) and the *Contractor* shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties shall have agreed in writing) after receipt of such modification, submit an amended *Contractor* Change Proposal.

13.11.11 As soon as practicable after the *Client* has evaluated the *Contractor* Change Proposal (amended as necessary) the *Client* shall:

13.11.11.1 either indicate its acceptance of the *Contractor* Change Proposal by issuing a serially numbered amendment letter in accordance with Clause 13.10, whereupon the *Contractor* shall promptly issue to the *Client* the *Contractor*'s DEFFORM 10B indicating their unqualified acceptance of such amendment in accordance with, and otherwise discharge their obligations

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under, such Clause and implement the relevant Change(s) in accordance with such proposal; or

13.11.11.2 serve a notice on the *Contractor* rejecting the *Contractor* Change Proposal and withdrawing (where issued in relation to a Change or Changes proposed by the *Client*) the *Client* Notice of Change (in which case such notice of change shall have no further effect).

13.11.12 If the *Client* rejects the *Contractor* Change Proposal, it shall not be obliged to give its reasons for such rejection.

13.11.13 The *Client* shall not be liable to the *Contractor* for any additional work undertaken or expense incurred in connection with the implementation of any Change(s), unless a *Contractor* Change Proposal has been accepted by the *Client* in accordance with Clause 11.a and then subject only to the terms of the *Contractor* Change Proposal so accepted.

### **Contractor Changes**

13.11.14 If the *Contractor* wishes to propose a Change or Changes, they shall serve a *Contractor* Change Proposal on the *Client*. Such proposal shall be prepared and reviewed in accordance with and otherwise be subject to the provisions of Clauses 13.11.8 to 13.11.13 (inclusive)."

13.12 Not used.

13.13 Insert a new Clause 13.13:

### **"Change of control of Contractor**

13.13.1 The *Contractor* shall notify the Representative of the *Client* at the address given in Clause 13.13.3, as soon as practicable, in writing of any intended, planned or actual change in control of the *Contractor*, including any Subcontractors. 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.

13.13.2 For the purposes of this Clause '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 by:

a. means of the holding of shares, or the possession of voting powers in, or in relation to, the *Contractor*; or

b. 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*.

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- 13.13.3 Each notice of change of control shall be taken to apply to all contracts with the *Client*. Notices shall be submitted to:
- Mergers & Acquisitions Section  
Strategic Supplier Management Team  
Spruce 3b #1301  
MOD Abbey Wood  
Bristol  
BS34 8JH
- 13.13.4 The Representative of the *Client* shall consider the notice of change of control and advise the *Contractor* in writing of any concerns the *Client* may have. Such concerns may include but are not limited to potential threats to national security, the ability of the *Client* to comply with its statutory obligations or matters covered by the declarations made by the *Contractor* prior to contract Award.
- 13.13.5 The *Client* may terminate the contract by giving written notice to the *Contractor* within six months of the *Client* being notified in accordance with Clause 13.13.1. The *Client* shall act reasonably in exercising its right of termination under this Clause.
- 13.13.6 If the *Client* exercises its right to terminate in accordance with Clause 13.13.5 the *Contractor* shall be entitled to request the *Client* 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 13.13.6 must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the *Client's* sole discretion.
- 13.13.7 Notification by the *Contractor* of any intended, planned or actual change of control shall not prejudice the existing rights of the *Client* or the *Contractor* under the contract nor create or imply any rights of either the *Contractor* or the *Client* additional to the *Client's* rights set out in this Clause."
- 15.4 At the end of the Clause insert:
- "No decision taken at an early warning meeting shall operate to change the contractual allocation of risk hereunder, unless specifically instructed otherwise in writing by the Project Manager."
- 17.1 Delete Clause 17.1 and substitute with:
- "The Project Manager or the *Contractor* notifies the other as soon as either becomes aware of any mistake, inaccuracy, discrepancy or omission in or between the Scope and any other document forming part of this contract or

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if the [ ]<sup>1</sup> Price for the works will increase due to such mistake, inaccuracy, discrepancy or omission. The Project Manager gives an instruction as to how the mistake, inaccuracy, discrepancy or omission is to be dealt with. Compliance with such an instruction by the *Contractor* shall not constitute a compensation event where the instruction relates to any mistake, inaccuracy, discrepancy or omission in the design of the works or in any part of the Scope or any other document forming part of this contract which was provided by the *Contractor*.”

19A After Clause 19.1, insert a new Clause 19A:

### “Collateral warranties

- 19A.1 The *Contractor* shall obtain from every *Subcontractor* with a design responsibility (and any other Subcontractors identified in the Scope) appointed by the *Contractor* and execute as a deed and deliver to the *Client* within fourteen (14) calendar days of receipt of relevant engrossments collateral warranties in a form to be agreed by the parties. Notwithstanding any other term of this contract and in addition to any other right or remedy of the *Client*, until the *Contractor* has procured the execution and delivery of all necessary deeds of collateral warranty required from any *Subcontractor* referred to in this Clause within fourteen (14) calendar days of the *Client* so requesting, the *Contractor* shall not be entitled to payment of any sums relating to the services or work of such *Subcontractor/s* which would otherwise be due and payable under the terms of this contract and (without prejudice to the generality of the foregoing) section 5 of this contract (Payment) shall be read and construed accordingly.
- 19A.2 The *Contractor* shall itself, within fourteen (14) calendar days of receipt of relevant engrossments enter into, execute as a deed and deliver collateral warranty agreements in the form to be agreed in favour of any Third Party. The *Client* may, notwithstanding any other provisions of this contract, withhold all future payments due to the *Contractor* under this contract until such collateral warranties have been satisfactorily executed and delivered to the *Client* or his duly appointed representative.
- 19A.3 The amount which shall be inserted in the appropriate Clause of each collateral warranty requiring a *Subcontractor* to take out and maintain Professional Indemnity Insurance (or, where approved by the *Client* as an alternative, Product Liability Insurance) shall be such reasonable amount as shall be approved by the *Client* (having regard to the nature of the Subcontractor’s responsibilities) (and in any case shall not (unless the Project Manager agrees otherwise in writing) be lower than the relevant level (if any) set out in the Scope), and the period of such insurance shall be 12 years from the Completion Date.
- 19A.4 The *Contractor* and Subcontractors shall comply with the applicable insurance requirements as set out in Schedule 1 to Part 5 of this contract, corresponding with the value and type of works involved. The *Contractor*

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<sup>1</sup> Insert either : 'Firm Price' which means a price, agreed for the Articles or Services, or both, which is not subject to variation; or 'Fixed Price' which means a price, agreed for the Articles or Services, or both, that is subject to variation in accordance with the variation of price provisions of the Contract;

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shall detail the relevant insurance details within the applicable Insurance Table within Appendix 2.”

19B Insert a new Clause 19.B:

### “Corrupt Gifts and Payments of Commission

19B.1 The *Contractor* shall not do, and warrants that in entering the contract it has not done any of the following (hereafter referred to as 'prohibited acts'):

19B.1.1 offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

19B.1.1.1 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

19B.1.1.2 for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown.

19B.1.2 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 it or on its behalf, or to its 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 *Client*.

19B.2 If the *Contractor*, its employees, agents or any *Subcontractor* (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the *Contractor* in relation to this contract or any other contract with the Crown, the *Client* shall be entitled:

19B.2.1 to terminate the contract and recover from the *Contractor* the amount of any loss resulting from the termination;

19B.2.2 to recover from the *Contractor* the amount or value of any such gift, consideration or commission; and

19B.2.3 to recover from the *Contractor* any other loss sustained in consequence of any breach of this *Clause*, where the contract has not been terminated.

19B.3 In exercising its rights or remedies under this *Clause*, the *Client* shall:

19B.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act or committing of any offence under the Bribery Act 2010;

19B.3.3 give all due consideration, where appropriate, to action other than termination of the contract, including (without being limited to):

19B.3.3.1 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 *Subcontractor* or anyone acting on its or their behalf;

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19B.3.3.2 requiring the *Contractor* to procure the dismissal of an employee (whether its own or that of a *Subcontractor* 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.

19B.4 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*."

19C Insert a new Clause 19C:

### **"Publicity**

19C.1 The *Contractor* may publicise the *works* and/or this contract only with the *Client's* written agreement.

19.C.2 The *Contractor* shall take all reasonable steps to ensure that its Personnel do not publicise the *works* and/or this contract other than in accordance with Clause 19.C.1."

19D Insert a new Clause 19):

### **"Disclosure of Information**

19D.1 Subject to Clauses 19D.4 to 19D.9 each party:

19D.1.1 shall treat in confidence all Information it receives from the other;

19D.1.2 shall not disclose any of that Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the *Contractor* may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the contract;

19D.1.3 shall not use any of that Information otherwise than for the purpose of the contract; and

19D.1.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the contract.

19D.2 The *Contractor* shall take all reasonable precautions necessary to ensure that all Information disclosed to the *Contractor* by or on behalf of the *Client* under or in connection with the contract:

19D.2.1 is disclosed to their employees and sub-contractors, only to the extent necessary for the performance of the contract; and

19D.2.2 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 *Client* under the contract or any sub- contract under it.

19D.3 The *Contractor* shall ensure that their employees are aware of their arrangements for discharging the obligations at Clauses 19D.1 and 19D.2

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before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

19D.4 A party shall not be in breach of Clauses 19D.1, 19D.2, 19D.6, 19D.7 and 19D.9 to the extent that either party:

19D.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, the contract;

19D.4.2 has the right to use or disclose the Information in accordance with other conditions of the contract; or

19D.4.3 can show:

a. that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the contract or any other agreement between the parties;

b. that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the contract;

c. that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

d. from its records that the same information was derived independently of that received under or in connection with the contract;

provided the relationship to any other Information is not revealed.

19D.5 Neither party shall be in breach of this Clause where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this Clause.

19D.6 The *Client* may disclose the Information:

19D.6.1 to any Central Government Body for any proper purpose of the *Client* or of the relevant Central Government Body, which shall include disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the *Client* shall ensure that the recipient is made aware of its confidentiality;

19D.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

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- 19D.6.3 subject to Clause 19D.7 below, to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 19D.6.4 subject to Clause 19D.7 below, on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Clause 11.2.33 including benchmarking organisation) for any purpose relating to or connected with this contract;
- 19D.6.5 on a confidential basis for the purpose of the exercise of its rights under the contract; or
- 19D.6.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the contract;
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this Clause 19D.
- 19D.7 Where the *Client* intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 19D.6.3 or 19D.6.4 above, the *Client* will endeavour to provide the *Contractor* with 3 Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under Clause 19D.6.3 above, if reasonably requested by the *Contractor* within 2 Business Days of such notice being given, where the *Client* has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the *Client* under this Clause.
- 19D.8 Before sharing any Information in accordance with Clause 19D.6 above, the *Client* may redact the Information. Any decision to redact information made by the *Client* shall be final.
- 19D.9 The *Client* shall not be in breach of the contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the *Client* shall consult the *Contractor* where the *Client* is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the *Contractor* of any decision to disclose the Information. The *Contractor* acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the *Client* shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this Clause shall affect the Contractor's rights at law.

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19D.10 Nothing in this Clause shall affect the parties' obligations of confidentiality where information is disclosed orally in confidence."

19E Insert a new Clause 19E:

### **"Waiver**

19E.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.

19E.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy."

19F Insert a new Clause 19F:

### **"Assignment and novation**

19F.1 The *Contractor* will not give, bargain, sell, assign, or otherwise dispose of the contract or any part thereof, or the benefit or advantage of the *contract* any part thereof, without the previous consent in writing of the *Client*. The *Client* may assign the benefit of the whole or any part of the contract at any time without the prior consent of the *Contractor*."

19G Insert a new Clause 19G:

### **"Severability**

19G.1 If any provision of the contract is held to be invalid, illegal or unenforceable to any extent then:

19G.1.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the contract but without invalidating any of the remaining provisions of the contract; and

19G.1.2 the parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision."

19H Insert a new Clause 19H:

### **"Audit**

19H.1 In addition to any other rights under this contract, the *Client* and its agents may at any time and without notice audit the books and records being maintained by the *Contractor* whilst undertaking this contract, including those books and records relating to any costs and expenses incurred by the *Contractor* or charged to the *Client* and including those books and records being maintained by the Subcontractors."

19I Insert a new Clause 19I:

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**“Right of Third parties**

- 19I.1 Except as provided in Clause 19I.2 of this Clause and notwithstanding anything to the contrary elsewhere in the contract, no right is granted to any person who is not a party to the contract to enforce any term of the contract in his own right and the parties to the contract declare that they have no intention to grant any such right.
- 19I.2 Where, and only where, either by a term in a Clause which has been expressly included in the contract or by another term which specifically refers to this Clause 19I, the contract expressly states that a third party shall be entitled to enforce a term of the contract:
- 19I.2.1 the said third party shall be entitled to enforce that term in his own right;
- 19I.2.2 the *Contractor* shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause) relevant to the exercise of that right; and
- 19I.2.3 the third party's rights shall be subject to any provision in the contract:
- i. that provides for the submission of disputes under the contract generally or the said rights in particular to arbitration (Clauses 9 of the Main Terms of the contract);
  - ii. that stipulates the law and jurisdiction that will govern the contract (Clause 8 of the Main Terms of the contract)."
- 19J Insert a new Clause 19J:

**“Adjudication**

- 19J.1 Any decision of the *Client*, an instruction from the Project Manager or a change to the Scope which is the subject of adjudication shall remain in force until the decision of the Adjudicator.
- 19J.2 For the purposes of this Clause 19J (Adjudication), the term “dispute” shall include any difference as defined by the Act.
- 19J.3 If either Party requires adjudication they shall notify the Adjudicator of such requirement.
- 19J.3A The Party notifying shall issue a further notice that shall:-
- 19J.3.1 specify the matter in dispute;
  - 19J.3.2 set out the principal facts and arguments relating to the dispute;
  - 19J.3.3 have appended all relevant documents which the Party referring the disputes relies upon;

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- 19J.3.4 request that the Adjudicator confirm it is willing to act within four (4) days of receipt of such notice.
- 19J.4 A copy of the notice referred to in Clause 19J.3 (Adjudication) and the appended relevant documents shall be sent to the other Party at the same time.
- 19J.5 Where the Adjudicator has not indicated its willingness to act in accordance with Clause 19J.3.4 (Adjudication), or where no adjudicator has been named in this contract, either Party may apply to the Chairman of The Technology and Construction Solicitors Association ("TeCSA") for a nomination, in which case, the following procedure will apply:
- 19J.5.1 the application shall be in writing, accompanied by a copy of this contract (without copies of any annexed documents, unless they are relevant to the dispute), a copy of the written notice requiring adjudication, and TeCSA's appropriate appointment fee;
- 19J.5.2 the Chairman of TeCSA shall endeavour to secure the appointment of an adjudicator and the referral to it of the dispute within seven (7) days from the notice requiring adjudication; and
- 19J.5.3 any person so appointed, and not any person named in this contract whose readiness or willingness is in question, shall be the Adjudicator.
- 19J.6 The Chairman of TeCSA shall have the power by written notice to the Parties to replace the Adjudicator with another nominated person if and when it appears necessary to the Chairman of TeCSA to do so. The Chairman of TeCSA shall consider whether to exercise such power if any Party shall represent to the Chairman of TeCSA that the Adjudicator is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the adjudication, or that the Adjudicator is failing with necessary dispatch to proceed with the adjudication or make its decision. In the event of a replacement under this Clause, directions and decisions of the previous Adjudicator shall remain in effect unless reviewed and replaced by the new Adjudicator, and all timescales shall be recalculated from the date of the replacement.
- 19J.7 Where an Adjudicator has already been appointed in relation to another dispute arising out of this contract, the Chairman of TeCSA may appoint either the same or a different person as the Adjudicator.
- 19J.8 Within seven (7) days of receipt of the notice referred to in Clause 19J.3.4 (Adjudication), the other Party may submit to the Adjudicator any statement, representations or documents which that Party relies upon relating to the dispute.
- 19J.9 The scope of the adjudication shall be the matters identified in the notice requiring adjudication, together with:
- 19J.9.1 any further matters which all Parties agree should be within the scope of the Adjudication; and

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- 19J.9.2 any further matters which the Adjudicator determines must be included in order that the adjudication may be effective and/or meaningful.
- 19J.10 The Adjudicator may rule upon its own substantive jurisdiction, and as to the scope of the adjudication.
- 19J.11 The underlying purpose of the adjudication is to resolve disputes between the Parties that are within the scope of the adjudication as rapidly and economically as is reasonably possible.
- 19J.12 Decisions of the Adjudicator shall be binding until the dispute is finally determined by arbitration pursuant to this Clause 19J (Adjudication) or by agreement.
- 19J.13 The Adjudicator shall:
- 19J.13.1 have the power to review and revise any certificates or other things issued or made in accordance with this contract;
- 19J.13.2 act fairly and impartially, but shall not be obliged or empowered to act as though it were an arbitrator; and
- 19J.13.3 establish the procedure and timetable for the adjudication.
- 19J.14 Without prejudice to the generality of Clause 19J.13.3 (Adjudication), the Adjudicator may if it thinks fit:
- 19J.14.1 require the delivery of written statements of case;
- 19J.14.2 require any Party to produce a bundle of key documents, whether helpful or otherwise to that Party's case, and to draw such inferences as may seem proper from any imbalance in such bundle that may become apparent;
- 19J.14.3 require the delivery to the Adjudicator and/or the other Party of copies of any documents other than documents that would be privileged from production to a court;
- 19J.14.4 limit the length of any written or oral submission;
- 19J.14.5 require the attendance before the Adjudicator for questioning of any Party or employee or agent of any Party;
- 19J.14.6 make site visits;
- 19J.14.7 make use of its own specialist knowledge;
- 19J.14.8 obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents;
- 19J.14.9 meet and otherwise communicate with any Party without the presence of other parties;
- 19J.14.10 make directions for the conduct of the adjudication orally or in writing;

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- 19J.14.11 review and revise any of its own previous directions;
- 19J.14.12 conduct the adjudication inquisitorially, and take the initiative in ascertaining the fact and the law; and
- 19J.14.13 reach its decision with or without holding an oral hearing, and with or without having endeavoured to facilitate an agreement between the Parties.
- 19J.15 The Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each Party a reasonable opportunity, in light of the timetable, of putting its case and dealing with that of its opponent.
- 19J.16 The Adjudicator may not:
  - 19J.16.1 require any advance payment of, or security for, its fees;
  - 19J.16.2 receive any written submissions from one Party that are not also made available to the other;
  - 19J.16.2.3 refuse any Party the right at any hearing or meeting to be represented by any representative of that Party's choosing who is present; or
  - 19J.16.2.4 act or continue to act in the face of a conflict of interest.
- 19J.17 The Adjudicator shall reach a decision with twenty-eight (28) days of referral or such longer period as is agreed by the Parties after the said dispute has been referred to the Adjudicator. The Adjudicator shall be entitled to extend the said period of twenty-eight (28) days by up to fourteen (14) days with the consent of the Party by whom the dispute was referred.
- 19J.18 If a Party requests adjudication, and it is subsequently established that it was not entitled to do so, that Party shall be solely responsible for the Adjudicator's fees and expenses.
- 19J.19 Subject to Clause 19J.18 (Adjudication), the Parties shall be jointly responsible for the Adjudicator's fees and expenses including those of any specialist consultant appointed under Clause 19J.14.8 (Adjudication). In its decision, the Adjudicator shall have the discretion to make directions with regard to those fees and expenses. If no such directions are made, the Parties shall bear such fees and expenses in equal shares, and if any Party has paid more than such equal share, that Party shall be entitled to contribution from the other Party accordingly.
- 19J.20 The Adjudicator may in any decision direct the payment of such compound or simple interest as may be commercially reasonable.
- 19J.21 All decisions of the Adjudicator shall be in writing and shall include its reasons for its decision.
- 19J.22 Every decision of the Adjudicator shall be implemented without delay. The Parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement of any such reliefs

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and remedies, regardless of whether such decision is, or is to be, the subject of any challenge or review. No Party shall be entitled to raise any right of set-off, counterclaim or abatement in connection with any enforcement proceedings.

- 19J.23 Neither TeCSA, nor its Chairman, nor deputy, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of its functions as Adjudicator, whether in negligence or otherwise, unless the act or omission is in bad faith.
- 19J.24 The adjudication and all matters arising in the course of it are and will be kept confidential by the Parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent legal proceedings.
- 19J.25 In the event that any Party seeks to challenge or review any decision of the Adjudicator in any subsequent arbitration, the Adjudicator shall not be joined as a party to, nor shall it be subpoenaed or otherwise required to give evidence or provide its notes in, such arbitration.
- 19J.26 No Party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the adjudication or the decision of the Adjudicator until such time as the Adjudicator has made its decision, or refused to make a decision, and until the Party making the application has complied with any such decision.”

19K Insert new Clause 19K:

### “Transparency

- 19K.1 Notwithstanding any other term of the contract, including Clause 19D where applicable, the *Contractor* understands that the *Client* may publish the Publishable Performance Information and the Transparency Information to the general public.
- 19K.2 Subject to Clause 19K.3, the *Client* shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- 19K.3 If, in the *Client's* reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the *Client* shall be entitled to exclude such information from publication. The *Client* acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the *Client* acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.

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- 19K.4 The *Contractor* shall assist and co-operate with the *Client* as reasonably required to enable the *Client* to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in the Annex to this Clause. Where the *Client* publishes Transparency Information, it shall:
- 19K.4.1 before publishing, redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA and/or the EIR, for the avoidance of doubt, including Sensitive Information;
- 19K.4.2 taking into account the Sensitive Information set out in DEFFORM 539A, consult with the *Contractor* where the *Client* intends to publish information which has been identified as Sensitive Information. For the avoidance of doubt the *Client*, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
- 19K.4.3 present 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.

## 20 The *Contractor's* main responsibilities

- 20.1 At the end of the Clause include: "and other applicable provisions of this contract including, but not limited to complying with the Accepted Programme."
- 20.2 Number not used.
- Insert new Clauses 20.5 – 20.8:
- 20.5 Without prejudice to any obligation of the *Contractor* contained anywhere in any document forming part of this contract (including the Scope) the *Contractor* warrants and undertakes that the works:
- 20.5.1 have been or will be carried out and completed using the best up-to-date practice with all reasonable skill and care expected of a competent designer of relevant discipline experienced in performing services for projects of a similar size, scope, nature, complexity and timescale to the Works,
- 20.5.2 have been or will be carried out and completed in a proper and workmanlike manner and using only good quality and sound materials of satisfactory quality and consistent with the intended use of the works,
- 20.5.3 comprise or will comprise only materials and goods which are new and of good and satisfactory quality and all workmanship, manufacture or fabrication will be to the standards necessary for completion of the works in accordance with this contract,

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- 20.5.4 will, when completed, comply with all appropriate requirements of any local or public authority *Client* and any relevant statutory requirements.
- 20.6 The *Contractor* warrants that he has the experience and resources to provide the works (including the design of the works) and has experience of, and provided works similar in size, scope and complexity to the works in the *Client's* industry.
- 20.7 The *Contractor* has had an opportunity of inspecting the Site and its surroundings and all existing structures thereon (including physical conditions and other conditions of or affecting this site) and shall be deemed to have fully acquainted itself with the same and to have obtained all the same information as to risks, contingencies and all other circumstances which may influence or affect the works and no failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstances whether the same ought reasonably to have been discovered or foreseen or not shall entitle the *Contractor* to an addition to the Prices or to a change in the Completion Date or to claim indemnities or otherwise any additional sum. The *Contractor* shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the *Client* (including the Scope and the Site Information) regarding any such matter as is referred to in this Clause and the *Client* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document (including the Scope and the Site Information) or any representation or statement whether negligently or otherwise made therein. In the event of any conflict between this sub-clause 20.7 and Clause 60.1(12) this sub-clause shall have priority.
- 20.8 The *Contractor* will provide continual supervision of the works and perform and provide everything necessary for the organisation and co-ordination of the works.
- 21.2 Delete Clauses 21.2 – 21.3 and replace with:
- 21.2 The Project Manager shall examine the design documents provided by the *Contractor* and shall be entitled to reject a design document as unsatisfactory only where he considers that:
- 21.2.1 the design document is not in accordance with the Scope; or
- 21.2.2 the design document does not comply with any Statutory requirements or regulations (including the Building Regulations, the Crown Fire Standards and any Town Planning Clearance or Clearances) or byelaws and associated legislation in force at the time the work is undertaken; or
- 21.2.3 if it is used for construction, it would render the Contractor's design unfit for the purpose or purposes described in the Scope.
- 21.3 Notwithstanding any approval by the Project Manager under Clauses 21.2 or any other provision to the contrary in this contract, the *Contractor* accepts entire responsibility for the design (including all design work prepared before or after the date hereof (and whether carried out by or on behalf of the *Client* or the *Contractor*)), all designs contained in the Scope and/or contained in

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any other document forming part of this contract and for any mistake, inaccuracy, omission or discrepancy in such design or such documents.

21.4 Add a new Clause 21.4:

21.4 The Project Manager's (or *Client's*) acceptance of the Contractor's design (or any part of it) does not change or remove or reduce the Contractor's responsibility to Provide the Works or his liability for the works including the design of the works

22.1 Delete Clause 22.1 and replace with:

### **"Intellectual Property Rights - Vesting In The *Client*."**

22.1

22.1.1 All intellectual property rights of any nature generated in the performance and/or delivery of the following *Contractor* Deliverables under the contract (but excluding any intellectual property rights in any equipment provided as new by the *Contractor* under this contract):

- any design document provided by the *Contractor* in relation to the works, Articles and Services;
- any modifications or updates to existing documentation (other than Background IPR as defined in Clause 22.1.13);
- the manufacturing of the Articles;
- the installation of the Services,<sup>2</sup>

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 *Client*. The *Contractor* shall take all necessary measures to secure that vesting. On request, the *Contractor* shall demonstrate to the *Client's* satisfaction that, where it has Sub-contracted work under the contract, it has secured that vesting in the work performed by its Subcontractors.

22.1.2 The *Contractor* shall take all necessary measures to irrevocably and unconditionally waive in favour of the *Client* any and all moral rights and all other non-assignable rights conferred on the Contractors employees and Subcontractors in-respect of any copyright work created in carrying out the contract. On request, the *Contractor* shall demonstrate to the *Client's* satisfaction that, where it has Sub-contracted work under the contract, it has secured that any and all moral rights in any copyright work created by the Contractors employees and its Subcontractors has been irrevocably and unconditionally waived in favour of the *Client*.

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<sup>2</sup> Wording added to confirm which deliverables will vest in MOD. DIPR to review. Note: M&R to confirm terminology here is correct for definitions and update

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- 22.1.3 The *Client* 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.
- 22.1.4 The *Client* 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 *Client*. The *Contractor* shall assist the *Client* 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 *Client*.
- 22.1.5 The *Contractor* shall mark any copyright work comprising Results with the legend: 'UK Ministry of Defence © Crown-owned copyright [*insert the year of generation of the work*]<sup>6</sup>.
- 22.1.6 Apart from intellectual property rights vested in the *Client* by virtue of Clause 22.1.1, ownership of, or rights in, all other intellectual property are not transferred to the *Client* by this Clause.
- 22.1.7 Unless otherwise agreed with the *Client*, 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.
- 22.1.8 The *Client* shall have the right to require the *Contractor* to furnish to the *Client* 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 *Client* unless already included in the price of the contract.
- 22.1.9 The *Contractor* shall treat the Results as if received in confidence from the *Client* and shall:
- not copy, use or disclose to a third party any of the Results without the prior written consent of the *Client*, except that the *Contractor* may without prior consent, copy and use the Results, and disclose the Results in confidence to its officers, employees and Subcontractors, 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 22.1.12 of this Clause; and
  - take all reasonable precautions necessary to ensure that the Results are treated in confidence by those of its officers, employees and Subcontractors who receive them and are not further disclosed or used otherwise than for the purpose of performing work or having work performed for the *Client* under the contract or any *Sub-contract* under it.

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<sup>3</sup> To be filled in with the relevant information.

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- 22.1.10 The *Contractor* shall ensure that his employees are aware of his arrangements for discharging the obligations at Clause 22.1.8 and take such steps as may be reasonably practical to enforce such arrangements.
- 22.1.11 The confidentiality provisions of Clause 22.1.9 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.
- 22.1.12 The *Contractor* shall not be in breach of the confidentiality obligations contained in this Clause 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 *Client* 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.
- 22.1.13 <sup>4</sup>For the purposes of Clause 22.1.13 "Background IPR" means any intellectual property rights, including patents or registered designs granted in respect of any patent or registered design applications, made before the date of issue of the *Client's* first written ITN for the contract and any such applications made after that date in respect of inventions or designs first reduced to writing by the inventor(s) or designer(s) before that date or any intellectual property rights which have otherwise been developed independently of the contract (whether prior to the date of the ITN or otherwise). To the extent any Results delivered in accordance with this Clause makes any use of, or relies in any way on Background IPR supplied by *Contractor* (or Background IPR supplied by the *Contractor* is necessary or desirable to be able to use all or any part of the Results), the *Contractor* hereby provides the *Client* a non-exclusive, irrevocable, worldwide, transferable, sub-licensable, royalty-free license to use such Background IPR for the purposes of exercising its rights in relation to the Results.
- 22.1.14 If the *Contractor* intends to make any use of, or relies in any way on Background IPR as defined in Clause 22.1.13, the *Contractor* shall clearly identify its scope in order for the *Client* to acknowledge it and decide whether to grant his approval for the *Contractor* to do so. If such approval is granted by the *Client*:
- If the Background IPR is COTS software either:
    - the *Contractor* is required to procure a licence to the software for the *Client*. The licence required is in the form of a DEFFORM 701 (Part 6 – Schedule 9 of this contract); or
    - if the *Contractor* is unable to secure a licence under the terms within DEFFORM 701 (Part 6 – Schedule 9 of this contract) then

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<sup>4</sup> Wording at 22.1.13-21.1.15 added to cover the inclusion of background IPR in vested deliverables and COTS. DIPR to review.

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the *Contractor* must inform the Client who will decide on the next course of action.

- If the Background IPR is not COTS software then the Client will require a licence on the same terms as described in Clause 22.1 of this contract.

22.1.15 The *Contractor* shall be entitled to request consent from the *Client* to re-use (under licence or otherwise) the Results and intellectual property rights vested in the *Client* by virtue of Clause 22.1.1 for other purposes including, but not limited to, tendering for other work for the *Client* or work for another UK Government department. Such consent shall be properly considered by the *Client* taking into account matters such as national security and the rights of third parties.

22A Insert a new Clause 22A:

### **“Third Party Intellectual Property – Rights and Restrictions**

#### **Notifications**

22A.1 As they become aware, the *Contractor* shall promptly notify the *Client* of:

22A.1.1 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 the contract or to use by the *Client* of anything required to be done or delivered under the contract;

22A.1.2 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 the contract or subsequent use by the *Client* of anything delivered under the contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958;

22A.1.3 any allegation of infringement of intellectual property rights made against the *Contractor* and which pertains to the performance of the contract or subsequent use by the *Client* of anything required to be done or delivered under the contract.

This Clause 22A.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.

22A.2 If the information required under this Clause has been notified previously, the *Contractor* may meet their obligations by giving details of the previous notification.

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

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- 22A.3 In respect of any question arising (by way of an allegation made to the *Client* or *Contractor*, or otherwise) that the manufacture or supply under the 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 *Client*, 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 *Client*, its officers, agents and employees against any liability and cost arising from such allegation. This Clause will not apply if:
- 22A.3.1 the *Client* has made or makes an admission of any sort relevant to such question;
- 22A.3.2 the *Client* has entered or enters into any discussions on such question with any third party without the prior written agreement of the *Contractor*;
- 22A.3.3 the *Client* 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 1949;
- 22A.3.4 legal proceedings have been commenced against the *Client* or the *Contractor* in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- 22A.4 The indemnity in Clause 22A.3 does not extend to use by the *Client* of anything supplied under the contract where that use was not reasonably foreseeable at the time of the contract.
- 22A.5. In the event that the *Client* has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the *Client* shall forthwith 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**

- 22A.6 If a relevant invention or design has been notified to the *Client* by the *Contractor* prior to the date of the 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 United Kingdom Patent or United Kingdom Registered Design, for the purpose of performing the contract.
- 22A.7 If, under Clause 22A.1, a relevant invention or design is notified to the *Client* by the *Contractor* after the date of contract, then:

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- 22A.7.1 if the owner (or their exclusive licensee) takes or threatens in writing to take any relevant action against the *Contractor*, the *Client* 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
- 22A.7.2 in any event, unless the *Contractor* and the *Client* can agree an alternative course of action, the *Client* 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**

- 22A.8 The *Client* shall assume all liability and shall indemnify the *Contractor*, their officers, agents and employees against liability, including the *Contractor*'s costs, as a result of infringement by the *Contractor* or their suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the contract when such infringement arises from or is incurred by reason of the *Contractor* following any specification, statement of work or instruction in the contract or using, keeping or disposing of any item given by the *Client* for the purpose of the contract in accordance with the contract.
- 22A.9 The *Contractor* shall assume all liability and shall indemnify the *Client*, its officers, agents and employees against liability, including the *Client*'s costs, as a result of infringement by the *Contractor* or their suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the 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 the contract or using, keeping or disposing of any item given by the *Client* for the purpose of the contract in accordance with the contract.

### **Royalties and Other Licence Fees**

- 22A.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 the contract, where:
- 22A.10.1 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
- 22A.10.2 any obligation to make payments for intellectual property has not been promptly notified to the *Client* under Clause 1 of this Clause.
- 22A.11 Where an authorisation is given by the *Client* under Clause 22A.5, Clause 22A.6 or Clause 22A.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:

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- 22A11.1 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 the contract, and
- 22A.11.2 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.**

- 22A.12 The *Contractor* shall assume all liability and indemnify the *Client* and its officers, agents and employees against liability, including costs as a result of:
- 22A.12.1 infringement or alleged infringement by the *Contractor* or their 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 the contract or otherwise in the performance of the contract;
- 22A.12.2 misuse of any confidential information, trade secret or the like by the *Contractor* in performing the contract;
- 22A.12.3 provision to the *Client* of any information or material which the *Contractor* does not have the right to provide for the purpose of the contract.
- 22A.13 The *Client* shall assume all liability and indemnify the *Contractor*, their officers, agents and employees against liability, including costs as a result of:
- 22A.13.1 infringement or alleged infringement by the *Contractor* or their 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 *Client* for the purpose of the contract but only to the extent that the item is used for the purpose of the contract;
- 22A.13.2 alleged misuse of any confidential information, trade secret or the like by the *Contractor* as a result of use of information provided by the *Client* for the purposes of the contract, but only to the extent that Contractor's use of that information is for the purposes intended when it was disclosed by the *Client*.

### **Authorisation and Indemnity - General**

- 22A.14
- 22A.14.1 The above represents the total liability of each party to the other under the contract in respect of any infringement or alleged infringement of Patent or other Intellectual Property Right owned by a third party.
- 22A.14.2 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.

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- 22A.14.3 A 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 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.
- 22A.14.4 The party benefiting from the indemnity or authorisation shall allow the other party, at their own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other party may reasonably require.
- 22A.14.5 Following a notification under sub-Clause 22A.14.3, the party notified shall advise the other party in writing within 30 days whether or not they are 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.
- 22A.14.6 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.
- 22A.15
- 22A.15.1 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 *Client*, the *Contractor* may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach;
- 22A.15.2 The parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party intellectual property rights.

### Subcontracts

- 22A.16 The *Contractor* shall secure from any *Subcontractor*, the prompt notification to the *Client* of the information required by Clause 22A.1 of this Clause. On receipt of any such notification the *Client* will issue a written authorisation to the *Subcontractor* in accordance with Clause 22A.7 of this Clause. Any such authorisation will be subject always to Clauses 22A.10, 22A.11 and 22A.14 as though the *Subcontractor* was the *Contractor*. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the *Client*. The *Contractor* is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the *Client* in such claim or action. Any arrangement between the *Contractor* and *Subcontractor* to enable the *Contractor* to underwrite their indemnities to the *Client* under this Clause is a matter between the *Contractor* and the *Subcontractor*."
- 22B Insert a new Clause 22B:

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**“Inventions And Designs Crown Rights And Ownership Of Patents And Registered Designs**

- 22B.1 The provisions of either of Part A and B hereof or of Part B, only as applicable to the Security Grading of the contract, shall apply in relation to any invention or design made in the course of or resulting from work carried out by the *Contractor* under the contract (hereinafter respectively referred to as 'the invention' and the “design”).

**Part A - Contracts For Work Classified As 'Official-Sensitive' Or Higher**

- 22B.2 Where any invention or design, to which the provisions of this condition apply, is made outside the UK and where local laws so require, any application may, notwithstanding the provisions of sub-clause 22B.3.3 of this condition, be made under conditions of secrecy at the local Patent Office of the territory where the invention or the design was made. Where local laws so require, the supply of a copy of the application under sub-clause 22B.6.1 of this condition shall be subject to any necessary approval of the local Patent Office but the application number and date of filing shall be notified to the *Client* in all cases.

22B.3

- 22B.3.1 The *Contractor* shall ensure that they and any Patent Agent or Attorney engaged by them shall treat the invention or design as bearing a Security Classification at least as high as the work to which it relates pending formal determination of its appropriate classification.

- 22B3.2 The preparation and filing of applications to which this Clause 22B.3 relates shall be handled by the Contractor's own Patent Department under the conditions of security applicable under the contract. If the *Contractor* does not have their own Patent Department they shall, before initiating the preparation of any application, secure the written Agreement of the *Client* (1) as to the Patent Agent or Attorney that they propose to employ for the preparation and filing of such an application.

- 22B3.3 Every application to which this Clause 22B.3 relates, whether filed by the *Contractor* or by a Patent Agent or Attorney engaged by them, shall be filed direct with the Security Section of the UK Patent Office, who shall be notified at the time of filing that the invention or design forming the subject of the application is related to classified Government work. The notification shall also quote the number of the contract and the name and address of the *Client*.

- 22B.4 For the purposes of Clause 29A.2 any patent application made in accordance with Clauses 22B.2 and 22B.3 shall be considered to have been made with the prior consent of the *Client*.

**Part B - All Contracts**

- 22B.5 The *Contractor* shall ensure, to the extent they are legally able to do so, that any invention to which this Clause relates and made by an employee of the *Contractor* in the course of duties as defined in Section 39(1) of the Patents



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Act 1977 and any design to which this Clause relates and made by an employee of the *Contractor* shall vest in the *Contractor*.

### 22B.6

22B.6.1 The *Contractor* shall within 45 days of filing a first patent application or any subsequent patent application claiming priority from a first patent application and directed towards obtaining protection in the UK (including a European Patent Application or an International Patent Application designating the UK) for the invention or any application for registration of the design provide the *Client* (1) with a copy of that application together with the number of the contract.

22B.6.2 The *Contractor* shall promptly notify the *Client* if they become aware of any application as aforesaid by any person who is, or has been, an employee or agent of the *Contractor* or a *Subcontractor* and provide the *Client* with relevant particulars insofar as they can obtain them and have the right to provide them.

22B.7 If an employee of the Crown is a joint inventor of the invention or part author of the design to which any application as is referred to in Clause 22B.6 above relates and the portion of or share in the invention or design made by that employee belongs to the Crown and neither the Crown nor that employee is the person, or one of the persons, making the application, the *Contractor* shall if so requested by the *Client* take all such steps and do all such things as are in their power and as may be necessary to ensure either that the *Client* or the employee concerned joins in the application or, at the option of the *Contractor*, and if the application is one for a patent, that it is either withdrawn or amended by the deletion from the application of any reference to that part of the invention made by the employee of the Crown, or, if the application is one for a Registered Design, that it is withdrawn.

22B.8 If an employee of the Crown is a party to any such application as is mentioned in clauses 22B.6 and 22B.7 above and the *Client* so requests, the *Contractor* shall at the expense of the *Client* take such reasonable steps as are in their power and may from time to time be necessary to ensure that the *Client* is substituted for the employee of the Crown as co-applicant and shall give all such consents and do all such things as may from time to time be necessary to enable the employee of the Crown to assign to the *Client* their interest in the application and in any Patent or Registered Design granted pursuant thereto, provided that the *Contractor* is not required by this Clause to consent to any assignment other than that specifically referred to herein.

22B.9 Subject to the provisions of clauses 22B.7 and 22B.8 above and to the rights of the *Client* as set out in Clause 10 below the invention or design shall belong to the *Contractor*.

22B.10 Any Government Department and any person authorised by a Government Department may in any part of the world do in relation to the invention any act as defined in Section 55(1) (a) to (e) of the Patents Act 1977 or use the design for the services of the Government of the United Kingdom.

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- 22B.11 Subject to Clause 22B.18 the *Contractor* shall not be entitled to any payment whatsoever in respect of anything done in accordance with Clause 22B.10 above (whether by the *Client*, a Government Department or any person whomsoever) and if any directions relating to the invention are given under Section 22(1) or 22(2) of the Patents Act 1977 the *Contractor* shall not have any claim for any such compensation as is mentioned in Section 22(7)(b).
- 22B.12 If any question under this Clause shall arise between the *Contractor* and the *Client* as to whether an employee of the Crown is a joint inventor of the invention or a part author of the design or as to whether the invention or design was made in the course of or resulted from work carried out by the *Contractor* under the contract, that question shall be referred for decision to such person as may be agreed upon between the *Contractor* and the *Client* or in default of such agreement as may be appointed by the President for the time being of the Chartered Institute of Patent Agents, and the decision of any such person on that question shall be final and conclusive.
- 22B.13 The *Contractor* shall at the request and expense of the *Client* take all such reasonable steps as are within their power and may from time to time be necessary to enable the *Client* to register in the UK Patent Office or elsewhere its interest in the invention or design. (2)
- 22B.14 The rights conferred by this Clause shall be in addition to and not in derogation of the rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949.
- 22B.15 In this Clause references to a Government Department are references to a Department of Her Majesty's Government in the United Kingdom.
- 22B.16 The foregoing provisions of this Clause shall have effect both during the period the *Contractor* is carrying out the other provisions of the contract and at all times thereafter.
- 22B.17 The *Contractor* shall include, in any *Sub-contract* which they may enter into for the purpose of the contract, provisions as in this Clause, but with the substitution therein of references to the *Subcontractor* for references to the *Contractor*, and of references to the *Sub-contract* for references to the contract, and the *Contractor* shall at all times use all reasonable endeavours to secure the full and effectual observance by the *Subcontractor* of those provisions and that the *Client* and all Government Departments obtain the benefit thereof, and to advise the *Client* if they become aware of any breach of the provisions. Provided that this Clause shall only apply to any *Sub-contract* for the carrying out of any work for research, design or development under the contract.
- 22B.18 Nothing herein shall prejudice the rights of either party arising otherwise than by virtue of this Clause.

### Notes

- (1) The agreement of the *Client* is to be sought from and the information addressed to:

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Patent Security Unit  
Directorate of Intellectual Property Rights  
Poplar 2 #2214  
MOD Abbey Wood  
BRISTOL BS34 8JH

Any communication from the *Client* to the *Contractor* on the subject of Clause 13 is to be addressed to the Contractor's address for service for the application."

22C Insert new Clause 22C:

### **"Design Rights And Rights To Use Design Information**

#### **Application**

22C.1 This Clause applies to deliverable Information identified in a Contract Data Requirement as being subject to Clause 22C.

#### **Ownership**

22C.2 All Intellectual Property generated in the performance of work under the contract shall, subject to any rights of the Crown or any third party and to the terms of this Clause, belong to the *Contractor*.

#### **Rights of Use**

22C.3 Subject to the provisions of this Clause and to the rights of third parties the *Client* and any other United Kingdom Government Department shall have, during the period of the contract and at all times thereafter, the right, anywhere in the world for the Services of the United Kingdom Government, to copy, in whole or in part, and use any Information to which this Clause applies:

##### **Monitoring and Evaluation**

22C.3.1 to monitor work under the contract and to inspect, test and evaluate the delivered Information and Articles;

##### **Fitting/Matching Equipment**

22C.3.2 to define the relevant interfaces to enable Articles to interface or cooperate with other equipment and to use the resultant interfaces for the purposes of designing, developing and manufacturing such other equipment;

##### **Associated Equipment**

22C.3.3 to design, develop and produce trainers and simulators relating to Articles; Jigs, Tools & Test Equipment

22C.4.4 to design, develop and produce jigs, tools, and test equipment relating to Articles;

##### **Competitive Procurement**

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- 22C.3.5 to manufacture Articles or, where the development of a process or material was specifically called for in the contract Schedule of Requirements, to use that process or to produce that material;

### Modification

- 22C.3.6 to Modify the design of Articles, including the carrying out of design investigations, or where the development of a process or material was specifically called for in the contract Schedule of Requirements, to Modify that process or material and to produce design, manufacturing, user and other documentation relating to the Modifications or to the Modified design;

### Disposal of Articles

- 22C.3.7 to dismantle, scrap or otherwise destroy any Article.

## Sales

- 22C.4 The *Client* shall also have the right to sell, hire, lease or otherwise dispose of anything manufactured in exercise of the rights granted under Clause 22C.3 of this Clause, which is either outworn or surplus stock.

## Conditions of Use

- 22C.5 The rights set out in clauses 22C.3 and 22C.4 of this Clause may be exercised by the *Client* itself, any other United Kingdom Government Department or any agent acting on behalf of, or a contractor in pursuance of a contract with, the *Client* or any such Department.
- 22C.6 The rights granted to the *Client*, and to any other United Kingdom Government Department, under this Clause are additional to any rights under any other contract. The rights include the right to copy and to issue any Information the subject of this Clause as necessary to prospective tenderers for the purposes of establishing their interest in tendering and of preparing tenders for anything to be done or proposed to be done pursuant to clauses 22C.3 or 22C.4.
- 22C.7 Except as provided in clauses 22C.8 and 22C.9 below or otherwise provided in the contract, the *Contractor* shall not be entitled to receive any royalty or other payment in respect of the exercise of the rights granted under clauses 22C.3 or 22C.4 of this Clause notwithstanding the existence of any Intellectual Property owned or controlled by the *Contractor* covering the Articles.
- 22C.8 Subject to the rights of the Crown arising otherwise than under this Clause, and provided that the *Contractor* has met in a timely manner any obligations included in the contract to inform the *Client* of the existence of any relevant United Kingdom patent or registered design, the *Contractor* shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any patented invention or registered design owned or controlled by the *Contractor* and used in the exercise of the rights granted under clauses

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22C.3 and 22C.4 of this Clause. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Information, that is deliverable under the contract and is subject to this Clause.

- 22C.9 Nothing in clauses 22C.7 and 22C.8 of this Clause shall affect the rights of the *Contractor* in or grant to the *Client* or any other United Kingdom Government Department any rights in, any Intellectual Property not covering the Articles.

### Consideration for Initial Production

- 22C.10 In the event that the contract does not cover initial production the *Client* will give consideration to placing any first production order for Articles with the *Contractor* provided that they can offer satisfactory price, delivery and other terms (whether established by competition or otherwise). The *Client* reserves the right to determine what constitutes a 'first production order' for the purpose of this Clause. For any subsequent order or orders for the production of Articles or for work in the exercise of rights under Clause 22C.3 of this Clause, the *Client* will normally seek competitive tenders, but undertakes to invite the *Contractor* to tender provided that they are still eligible to perform such work for the *Client*.

### Modifications

- 22C.11 The rights under sub-clause 22C.3.6 shall only be exercised if:
- 22C.11.1 the *Contractor* is unwilling to accept or unable to perform a contract on fair and reasonable terms for the Modifications required; or
- 22C.11.2 the Modifications are required to enable the Articles to interface with equipment supplied by a third party.

In either event, the *Client* shall, upon receipt of a written request from the *Contractor*, ensure that the *Contractor* is provided with one copy of all Information delivered to the *Client* in relation to any such Modification. The *Client* shall grant or procure for the *Contractor* the right to be granted a licence to use, have used and sub-license in any part of the world any Intellectual Property covering such Information for the purposes of manufacturing, selling and supporting any Article on fair and reasonable terms as between willing licensee and willing licensor.

### Liability

- 22C.12 In the event that Information to which this Clause applies is used by or for the *Client* otherwise than for the purpose for which the Information was supplied in accordance with the relevant Contract Data Requirement, the *Contractor* shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the *Client* or any third party, arising from its use.

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### Release of Information and Confidentiality

- 22C.13 The *Client* shall ensure that Information released to any third party under this Clause is limited to that necessary for the task on which the third party is engaged.
- 22C.14 All Information which is provided to the *Client* subject to this Clause is disclosed in confidence and shall only be copied, disclosed and used in accordance with the provisions of this Clause. The *Client* shall ensure that all disclosures of Information to any third party shall be under express conditions of confidentiality between the *Client* and the third party, and shall procure, at the request of the *Contractor*, a direct confidentiality agreement in the form of DEFFORM 94.

### Clarification of Information

- 22C.15 At the request of the *Client*, or any other United Kingdom Government Department, at any time during the period for which the *Contractor* is required by this or any subsequent contract to retain the Information the *Contractor* shall, subject to the availability of resources and within the United Kingdom, provide assistance to the *Client*, the other Department or its agents or contractors in exercising the rights granted under this Clause. Such assistance shall be limited to that required to enable a third party of similar skill to the *Contractor* in the relevant area of technology to interpret any Information supplied under the terms of this Clause. The *Contractor* shall be entitled to payment by the *Client* or other United Kingdom Government Department on fair and reasonable terms for any such assistance provided.

### Marking

- 22C.16 Any Information supplied subject to this Clause may be marked by the *Contractor* with a copyright and/or other restrictive legend provided that the legend acknowledges the *Client's* rights under this Clause. Any such marking shall be perpetuated in any copies of the Information made by the *Client* or any other United Kingdom Government Department or its agents or contractors.

### Levy

- 22C.17 The *Contractor* shall not sell any Articles developed under the contract, otherwise than for the purposes of the United Kingdom Government, or grant any licence to manufacture such Articles or any materials or processes the design or development of which was called for in the Schedule of Requirements of the contract without first agreeing with the *Client* the sum or sums (if any) which should reasonably be paid to the *Client* by the *Contractor* in respect of such sale or grant having regard, among other things, to the amounts paid or payable to the *Contractor* by the *Client* under the contract.

### Interpretation

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22C.18 The headings in this Clause are for convenience only and shall not affect the interpretation of the Clause.

22C.19 This Clause shall constitute an agreement to the contrary for the purposes of Section 48(5) of the Copyright, Designs and Patents Act 1988 and an assignment to the *Contractor* of future design right for the purposes of Section 223 of the Copyright, Designs and Patents Act 1988.”

22D Insert new Clause 22D:

### “Repair And Maintenance Information

#### Application

22D.1 This Clause applies to deliverable Information identified in a Contract Data Requirement as being subject to Clause 22D.

#### Ownership

22D.2 All Intellectual Property Rights in the Information subject to this Clause shall, subject to any rights of the Crown or any third party and to the terms of this Clause, belong to the *Contractor*.

#### Rights of Use

22D.3 Subject to the provisions of this Clause and to the rights of third parties the *Client* and any other United Kingdom Government Department shall have, during the period of the contract and at all times thereafter, the right, anywhere in the world for the Services of the United Kingdom Government, to copy, in whole or in part, and use any Information to which this Clause applies:

##### Monitoring and Evaluation

22D.3.1 to monitor work under the contract and to inspect, test and evaluate the delivered Information and Articles;

##### In Service Support

22D.3.2 to carry out Maintenance and Repair of Articles owned or in use by the *Client*;

##### Jigs, Tools & Test Equipment

22D.3.3 to design, develop and produce jigs, tools and test equipment for the in-service support of Articles;

##### Disposal of Articles

22D.3.4 to dismantle, scrap or otherwise destroy any Articles;

##### Operation

22D.3.5 to operate Articles.

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## Sales

- 22D.4 If the *Client* sells, hires, leases or otherwise disposes of any Article, the *Client* may supply relevant user handbooks and maintainer information supplied under the contract (or copies thereof) to the recipient and permit the recipient to copy and use such information for operation and maintenance of any such Article.

## Conditions of Use

- 22D.5 The rights set out in Clauses 22D.3 and 22D.4 of this Clause may be exercised by the *Client* itself, any other United Kingdom Government Department or any agent acting on behalf of, or a contractor in pursuance of a contract with, the *Client* or any such Department.
- 22D.6 The rights granted to the *Client*, and to any other United Kingdom Government Department, under this Clause are additional to any rights under any other contract. The rights include the right to copy and to issue any Information the subject of this Clause as necessary to prospective tenderers for the purposes of establishing their interest in tendering and of preparing tenders for anything to be done or proposed to be done pursuant to Clause 22D.3.
- 22D.7 Except as provided in Clauses 22D.8 and 22D.9 below or otherwise provided in the contract, the *Contractor* shall not be entitled to receive any royalty or other payment in respect of the exercise of the rights granted under Clauses 22D.3 or 22D.4 of this Clause notwithstanding the existence of any Intellectual Property owned or controlled by the *Contractor* covering the Articles.
- 22D.8 Subject to the rights of the Crown arising otherwise than under this Clause and provided that the *Contractor* has met in a timely manner any obligations included in the contract to inform the *Client* of the existence of any relevant United Kingdom patent or registered design, the *Contractor* shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any patented invention or registered design owned or controlled by the *Contractor* and used in the exercise of the rights granted under Clauses 22D.3 and 22D.4 of this Clause. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Information, that is deliverable under the contract and is subject to this Clause.
- 22D.9 Nothing in Clauses 22D.7 and 22D.8 of this Clause shall affect the rights of the *Contractor* in or grant to the *Client* or any other United Kingdom Government Department any rights in, any Intellectual Property not covering the Articles.

## Contracted Repair and Maintenance



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- 22D.10 In the event that the contract does not provide for repair, reworking or reconditioning of Articles involving Information other than that used for routine servicing, and where an order is to be placed for the conduct of such repair, reworking or reconditioning outside an establishment or depot of the *Client*, the *Client* undertakes to invite the *Contractor* to tender provided that they are still eligible to perform such work for the *Client*.

### Liability

- 22D.11 In the event that Information to which this Clause applies is used by or for the *Client* otherwise than for the purpose for which the Information was supplied in accordance with the relevant Contract Data Requirement, the *Contractor* shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the *Client* or any third party, arising from its use.

### Release of Information and Confidentiality

- 22D.12 The *Client* shall ensure that Information released under this Clause to any third party is limited to that necessary for the task on which the third party is engaged.
- 22D.13 All Information which is provided to the *Client* subject to this Clause is disclosed in confidence and shall only be copied, disclosed and used in accordance with the provisions of this Clause. The *Client* shall ensure that all disclosures of Information to any third party shall be under express conditions of confidentiality between the *Client* and the third party, and shall procure at the request of the *Contractor*, a direct confidentiality agreement in the form of DEFFORM 94.

### Clarification of Information

- 22D.14 At the request of the *Client*, or any other United Kingdom Government Department, at any time during the period for which the *Contractor* is required by this or any subsequent contract to retain the Information the *Contractor* shall subject to the availability of resources and within the United Kingdom, provide assistance to the *Client*, the other Department or its agents or contractors in exercising the rights granted under this Clause. Such assistance shall be limited to that required for a third party of similar skill to the *Contractor* in the relevant area of technology to interpret any Information supplied under the terms of this Clause. The *Contractor* shall be entitled to payment by the *Client* or other United Kingdom Government Department on fair and reasonable terms for such assistance provided.

### Marking

- 22D.15 Any Information supplied subject to this Clause may be marked by the *Contractor* with a copyright and / or other restrictive legend provided that the legend acknowledges the *Client's* rights under this Clause. Any such marking shall be perpetuated in any copies of the Information made by the *Client* or any other United Kingdom Government Department or its agents or contractors.

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## Interpretation

- 22D.16 The Clause headings in this Clause are for convenience only and shall not affect the interpretation of the Clause.
- 22D.17 This Clause shall constitute an agreement to the contrary for the purposes of Section 48(5) of the Copyright, Designs, and Patents Act 1988.”
- 22E Insert new Clause 22E:

## “Retention Of Records

### Application

- 22E.1 This Clause applies to deliverable Information identified in a Contract Data Requirement as being subject to Clause 22E.

### Maintenance of Control Copy

- 22E.2 During the period of the contract and thereafter for not less than two years, or such other period as may be specified in the contract:
- 22E.2.1 the *Contractor* shall maintain at least one copy (hereinafter called the 'Control Copy') of all deliverable Information to which this Clause applies;
- 22E.2.2 the Control Copy shall be maintained in media and formats agreed to by the *Client*, and it shall not be altered by the *Contractor* in any way which changes the build standard except as authorised in writing by the *Client*. The Control Copy shall be deemed to be the property of the *Client*, and the *Client* may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the *Contractor* or any transfer of its assets to any third party; and
- 22E.2.3 copies of Information held on the Control Copy shall be supplied as required from time to time by the *Client* at the *Client's* expense.
- 22E.3 If the *Contractor* enters into another contract with the *Client* regarding maintenance of the Control Copy, the Contractor's obligation under Clause 22E.2 of this Clause shall be governed by that contract at the end of the period referred to in Clause 22E.2 of this Clause. Otherwise they may destroy or amend the Control Copy as they see fit, but before destroying the Control Copy they shall offer to supply it to the *Client* and give the *Client* 60 days to request such supply.

### Intellectual Property

- 22E.4 Nothing in this Clause shall affect the ownership of, or user rights in, any Intellectual Property.”
- 22F Insert new Clause 22F:

## “Copyright

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- 22F.1 This Clause shall apply to all copyright works generated under the contract, or delivered to the *Client* under the provisions of the contract, except that it shall not apply to:
- 22F.1.1 copyright works for which the *Client* is otherwise licensed under this contract;
- 22F.1.2 copyright works covered by such other software Clause as may appear in the contract; or
- 22F.1.3 any work deliverable generated under the contract and subject to the terms of Clause 22.1, 22C, Clause 22D and Clause 22E.
- 22F.2 The *Contractor* shall use all reasonable endeavours to ensure that copyright in any work generated under the contract shall be the property of and vest in the *Contractor*, subject to the rights of third parties in pre-existing works.
- 22F.3 The *Contractor* agrees not to publish any copyright work generated under the contract without the consent in writing of the *Client*. The *Client* will not normally raise objection to publication unless delay or limited publication only is considered necessary in the national interest. The *Client* will review, upon request by the *Contractor*, any such restriction on publication.
- 22F.4 The *Client* shall have, in respect of any copyright work to which this Clause applies, a free licence;
- 22F.4.1 to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the *Contractor* or pursuant to sub-clause 22F.4.2 or 22F.4.3 of this Clause, be made available to any third party;
- 22F.4.2 to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes;
- 22F.4.3 to issue the work or any part of the work or any copy of the work or any part thereof to the government(s) of the nation(s) with whom the United Kingdom Government and/or any Government Department has in place a reciprocal defence agreement or arrangement<sup>5</sup>, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party;
- provided that, subject to any pre-existing rights of the *Client*, sub-Clauses 22F.4.2) and 22F.4.3) above shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof

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<sup>5</sup> Note, wording added as discussed with DIPR

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is generated under the contract. Sub-Clauses 22F.4.2) and 22F.4.3) shall apply to all works or parts thereof unless otherwise marked by the *Contractor* in accordance with Clause 22F.5 below.

- 22F.5 As soon as they become aware that any copyright work or part thereof delivered or proposed to be delivered is a work subject to special conditions or any third party rights known to the *Contractor*, or is a work or part thereof not generated under the contract, the *Contractor* shall inform the *Client* and upon delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.
- 22F.6 The *Contractor* may mark or include in any copyright work to which this Clause applies a copyright notice provided that such copyright notice acknowledges the *Client's* rights under this Clause. Any such notice shall be perpetuated in any copies of such work made by the *Client* or any other United Kingdom Government Department or its agents or contractors.
- 22F.7 This Clause shall constitute an 'agreement to the contrary' for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.
- 22F.8 In this Clause 'copyright work' shall be understood to include any works, data or other materials in which a database right subsists."
- 22G Insert new Clause 22G:

### **"International Collaboration**

- 22G.1 For the purpose of this Clause the expression 'International Collaboration Agreement' shall mean any agreement or arrangement made or proposed to be made between the United Kingdom Government and the government of another country or any government-sponsored international body for collaboration in a joint programme of research, development, production, supply or operations utilising any results produced under the contract, and for the allocation of responsibility for work under such programme between the parties to such agreement or arrangement.
- 22G.2 Subject to the rights of third parties arising otherwise than from work performed under the contract and to the provisions of this Clause, the *Client* shall have the right under this Clause 22G.2 to copy any copyright work furnished by the *Contractor* under the contract, the copyright in which belongs to the *Contractor*, and to issue for information only such work or copy for the purpose of promoting the establishment of an International Collaboration Agreement and for the purpose of technical oversight of an International Collaboration Agreement made. Subject as aforesaid, the *Contractor* shall, if requested by the *Client* within the period prescribed in the contract, provide the *Client* with such assistance and further information as the *Client* may reasonably require for such promotion and technical oversight. A reasonable charge for this service, based on the cost of providing it, will be borne by the *Client*.
- 22G.3 If, under an International Collaboration Agreement made, the *Client* agrees that any results produced under the contract shall be utilised in work undertaken or shared by or on behalf of another party to such International

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Collaboration Agreement then, to the extent of their right to do so and on fair and reasonable terms approved by the *Client*, the *Contractor* shall, if requested by the *Client* within the period prescribed in the contract, make available under licence to that other party or their nominee, for use for the purpose provided in such an International Collaboration Agreement only, any information which the *Client* is entitled to receive under the contract, together with any technical assistance and background information necessary for the effective application of such information.

### 22G.4

- 22G.4.1 If disclosure by the *Client* under Clause 22G.2 of any copyright work would affect any rights of the *Contractor* or third parties arising otherwise than from work performed for the purposes of the contract, the *Contractor* shall have the right to place on such copyright work a notice stating that it is supplied under contract to the *Client* and may not be issued outside United Kingdom Government Departments except in accordance with the conditions of the contract. Before exercising its rights under Clause 22G.2 in respect of any work bearing such notice the *Client* shall give to the *Contractor* prior written notice of fifteen days (or such other period as may be agreed) of its intention to do so and have regard to any representations made by the *Contractor* at any time before issue takes place as to the protection of any separately identifiable trade secrets, know-how, or similar proprietary information arising otherwise than from work performed under the contract. The *Contractor* shall be free under the terms of this Clause to make any proposals for the protection of the information referred to herein. In particular, the *Client* shall give full consideration to any proposals the *Contractor* may make for the preparation of a special International Collaboration Report, for the release of information in stages, or for restrictions on the circulation of the information to be released. The *Client* shall be entitled to make issue contrary to such representations and proposals fifteen days after notifying the *Contractor* in writing that it considers it in the national interest to do so.
- 22G.4.2 The *Client* shall not have the right and the *Contractor* shall not be obliged under this Clause to disclose to a third party directly or indirectly manufacturing or design information with respect to units, sub-units or components not developed or designed under the contract. Provided that if the *Contractor* has not granted and does not wish to grant a licence to a manufacturer in the country of the other party and if so there is no reasonable substitute article available in the other country the *Contractor* shall in that event be obliged to make the disclosure and grant a licence direct to at least one manufacturer in the country of the other party to be approved by the *Contractor*. The *Contractor* shall on request supply the identification and shape, size and function of such units, sub-units and components.
- 22G.4.3 The *Contractor* shall on request insofar as they may be able to do so supply or procure the supply of such of the units, sub-units and components referred to in sub- Clause 22G.4.2) of this Clause as may be required to such other party within a reasonable timescale and on reasonable commercial, non-discriminatory terms.
- 22G.4.4 If the *Client* makes issue of information contrary to the *Contractor's* representations under sub- Clause 22G.4.1) of this Clause as to the

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protection of trade secrets, know-how and similar proprietary information, the *Contractor* shall be entitled to such compensation, if any, as is fair and reasonable in the circumstances.

22G.5 If the *Contractor* is party to a licence or other agreement relating to the use of inventions, designs or technical information which restricts their freedom to supply or authorise the disclosure or use of information for the purposes of this Clause, the *Contractor* shall, when tendering, quoting a price for the contract, or offering to perform it (or, if at these times the restriction is not apparent, as soon thereafter as it is), notify the *Client* and at the *Client's* request use all reasonable efforts with the assistance and at the expense of the *Client* to abate the restrictions to the extent required. Without the prior consent in writing of the *Client*, the *Contractor* shall not wittingly make use in the performance of the contract of inventions, designs or technical information which are the subject of any agreement made after the date of the contract or make any grant of rights in the results of work under the contract which they know would restrict their freedom as aforesaid.

22G.6 Unless in respect of any particular *Sub-contract* the *Client* agrees otherwise, the *Contractor* shall include the provisions of this Clause mutatis mutandis in any *Sub-contract* placed by them for the performance of any work of research, study, or development for the purposes of the contract.

22G.7 The *Client* undertakes that it will consult with the *Contractor* as early, as frequently and as fully as is reasonably practicable in the consideration of any International Collaboration Agreement into which it may wish to enter and will pay due regard to any representations of the *Contractor*."

22H Insert a new Clause 22H:

### **"GDPR**

22H.1 The *Client* and the *Contractor* shall comply with the provisions of Part 5, Schedule 3 of this contract."

24A Insert new Clause 24A:

### **"Sustainability**

24A.1 The *Contractor* shall take all reasonable steps to procure the observance of the Best Environmental Practice and Environmental Laws (including any Statutory Requirements relating to Best Environmental Practice and Environmental Laws) and the DREAM Requirements related to the subject matter or the execution of the contract by any servants, employees or agents of the *Contractor* and any subcontractors engaged in the performance of the contract.

24A.2 If the *Contractor* becomes aware of any prosecution or proceedings, for criminal breaches of the Best Environmental Practice and Environmental Laws (including any Statutory Requirements relating to Best Environmental Practice and Environmental Laws) and the DREAM Requirements related to the subject matter or the execution of the contract, against the *Contractor*, any servants, employees or agents of the *Contractor* and any subcontractors

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engaged in performance of the contract, the *Contractor* shall immediately notify the *Client* at the address specified in the contract.

- 24A.3 Any convictions during the period of the contract for criminal breaches of the Best Environmental Practice and Environmental Laws (including any Statutory Requirements relating to Best Environmental Practice and Environmental Laws) and the DREAM Requirements related to the subject matter or the execution of the 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 material breach of this contract. In such cases and the *Client* shall have the right to terminate the contract in accordance with the provisions of Clause 90B.
- 24A.4 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.
- 24A.5 Number not used.
- 24A.6 Number not used.
- 24A.7 Number not used.
- 24A.8 Number not used.
- 24A.9 Number not used.
- 24A.10 Number not used.
- 24B Insert new Clause 24B:

### **“Child Labour and Employment Law and Modern Slavery Act**

- 24B.1 The *Contractor* shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this contract is being performed. The *Contractor* is prohibited from using slave, forced, bonded, child or involuntary prison labour. No employees of the *Contractor* nor any of its Subcontractors shall be forced to lodge deposits or identity papers with the *Contractor* and any employees shall be free to leave the *Contractor's* employment after giving reasonable notice.
- 24B.2 The *Contractor* agrees to take reasonable efforts to reflect this Clause 24B (Child Labour and Employment Law) in any Subcontract that it enters into to satisfy the requirements of this contract and to require its Subcontractors to reflect this Clause 24B (Child Labour and Employment Law) in their Subcontracts that they enter into to satisfy the requirements of this contract.
- 24B.3 The *Client* has a zero-tolerance approach to modern slavery and human trafficking, and it is committed to acting ethically in its business dealings and relationships and to implement and enforce effective procedures and controls to prevent modern slavery and human trafficking in its business dealings and relationships. The *Client* expects the same high standards from all its consultants, contractors, suppliers, employees and agents. The *Contractor* undertakes and warrants that it:

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- 24B.3.1 has not committed any offence under the Modern Slavery Act 2015 or committed acts which would be offences under the Act in any other jurisdiction;
- 24B.3.2 has in place adequate procedures and controls to prevent modern slavery and human trafficking as contemplated by the Modern Slavery Act 2015;
- 24B3.2 shall comply, and shall require its Subcontractors, suppliers, employees and agents to comply, with the Modern Slavery Act, the *Client's* Anti-Slavery and Human Trafficking Policy entitled "Tackling Modern Slavery in Supply Chains;
- 24B3.3 The *Contractor* shall:
- 24B3.3.1 Complete the Modern Slavery Assessment Tool ([Modern Slavery Assessment Tool - Supplier Registration Service \(cabinetoffice.gov.uk\)](https://modernslaveryassessmenttool.cabinetoffice.gov.uk)) before signing this contract;
- 24B3.3.2 provide a 'supply chain map' which includes details of Subcontractors (such as the name of the manufacturing facilities and their locations);
- 24B3.3.3 allow unannounced inspections of premises by the *Client* or third-party auditors (the cost of which shall be shared by the *Contractor* and *Client*) and ensure that inspectors/auditors are able to speak directly to *Contractor's* employees in a confidential manner and using the employee's native language;
- 24B3.3.4 if requested by the *Client*, share social audit reports of its Subcontractors and cooperate with the *Client* to undertake additional human rights audits of Subcontractors if the *Client* requests;
- 24B3.3.5 report the discovery or suspicion of any slavery, trafficking and labour rights abuses in its operations or supply chains to the *Client* and relevant national or local law enforcement agencies;
- 24B3.3.6 remedy or work with its Subcontractors to remedy and labour abuses uncovered in operations or supply chains and submit, agree and deliver an action plan to remedy any modern slavery issues; and
- 24B3.3.7 as a last resort (where the Subcontractor has not taken steps to remedy the situation), terminate a Subcontract, if the Subcontractor is in breach of any of the terms of the subcontract relating to modern slavery and human rights issues, provided steps have been taken to ensure workers are not harmed as a result.
- 24B.4 The *Contractor* acknowledges and confirms that:
- 24B.4.1 preventing modern slavery in public sector supply chains is likely to be most effective if done in co-operation with its contractors;
- 24B.4.2 The *Client* expects all of its suppliers to maintain high standards of integrity and professionalism in their business dealings, adhering to the laws of the countries in which they operate;
- 24B.4.3 the *Client* seeks to apply the ethos of the Modern Slavery Act 2015 across all of its procurements as best practice in order to prevent modern slavery in order for the *Client*, the *Contractor* and its Sub-Contractors to avoid the taint of being associated with it."

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24C Insert a new Clause 24C:

**“Protection of Personal Data(Where Personal Data is being processed on behalf of the *Client*)**

**Data Protection**

- 24C.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 have regard to guidance issued by the Information Commissioner's Office and take appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.
- 24C.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Client* is the Controller and the *Contractor* is the Processor of the personal data contained in and/or referred to in DEFFORM 532. The only processing that the *Contractor* is authorised to do is listed in DEFFORM 532 by the *Client* and may not be determined by the *Contractor*. The completed DEFFORM 532 shall form part of the Scope for the contract.
- 24C.3 The *Contractor* shall notify the *Client* without undue delay if it considers that any of the *Client*'s instructions infringe the Data Protection Legislation. The *Client* agrees that the *Contractor* shall not be required to provide legal advice to the *Client* and that no notification (or absence of notification) by the *Contractor* will be construed as legal advice or a representation by the *Contractor*.
- 24C.4 The *Contractor* shall provide all reasonable assistance to the *Client* in the preparation of any Data Protection Impact Assessment prior to commencing any processing that is likely to result in a high risk to the rights and freedoms of Data Subjects. Such assistance may, at the discretion of the *Client*, include:
- 24C.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 24C.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the contract;
- 24C.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 24C.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 24C.5 The *Contractor* shall, in relation to any Personal Data processed in connection with its processing obligations under the contract:
- 24C.5.1. process that Personal Data only in accordance with DEFFORM 532, unless the *Contractor* is required to do otherwise by Law. If it is so required the *Contractor* shall promptly notify the *Client* before processing the Personal Data unless prohibited by Law;

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- 24C.5.2 ensure that it has in place Protective Measures, including those set out in DEFFORM 532, as appropriate to protect against a Data Loss Event, which the *Client* may acting reasonably reject (but failure to reject shall not amount to approval by the *Client* of the adequacy of the Protective Measures), having taken account of the:
- 24C.5.2.1 nature of the data to be protected;
- 24C.5.2.2 harm that might result from a Data Loss Event;
- 24C.5.2.3 state of technological development; and
- 24C.5.2.4 cost of implementing any measures;
- 24C.5.3 ensure that:
- 24C.5.3.1 subject to Clause 24C.5.1, the *Contractor* Personnel do not process Personal Data except in accordance with the contract (and in particular DEFFORM 532);
- 24C.5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any *Contractor* Personnel who have access to the Personal Data by ensuring that they undertake the Government's Baseline Personnel Security Standard or other standard as specified in the contract and ensure that they:
- a. are aware of and comply with the Contractor's duties under this Clause;
  - b. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the *Client* or as otherwise permitted by the contract; and
  - c. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 24C.5.4 not transfer Personal Data outside of the UK (other than to/from the EU and EEA) unless the prior written consent of the *Client* has been obtained and the following conditions are fulfilled:
- 24C.5.4.1 the *Client* or the *Contractor* has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA 2018 Article 73) as determined by the *Client*;
- 24C.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
- 24C.5.4.3 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 *Client* in meeting its obligations); and
- 24C.5.4.4 the *Contractor* complies with any reasonable instructions notified to it in advance by the *Client* with respect to the processing of the Personal Data;

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- 24C.5.5 at the written direction of the *Client*, delete or return Personal Data (and any copies of it) to the *Client* on termination of the contract unless the *Contractor* is required by Law to retain the Personal Data.
- 24C.6 Subject to Clause 24C.5, the *Contractor* shall notify the *Client* without undue delay if, in connection with Personal Data processed under the contract, it:
- 24C.6.1 receives a Data Subject Request (or purported Data Subject Request);
- 24C.6.2 receives a request to rectify, block or erase any Personal Data;
- 24C.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 24C.6.4 receives any communication from the Information Commissioner or any other regulatory authority;
- 24C.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 24C.6.6 becomes aware of a Data Loss Event.
- 24C.7 The *Contractor's* obligation to notify under Clause 24C.6 shall include the provision of further information to the *Client* in phases, as details become available.
- 24C.8 Taking into account the nature of the processing, the *Contractor* shall provide the *Client* with reasonable assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 24C.6 (and insofar as possible within the timescales reasonably required by the *Client*) including by promptly providing:
- 24C.8.1 the *Client* with full details and copies of the complaint, communication or request;
- 24C.8.2 such assistance as is reasonably requested by the *Client* to enable the *Client* to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- 24C.8.3 the *Client*, at its request, with any Personal Data it holds in relation to a Data Subject;
- 24C.8.4 assistance as requested by the *Client* following any Data Loss Event;
- 24C.8.5 assistance as requested by the *Client* with respect to any request from the Information Commissioner's Office, or any consultation by the *Client* with the Information Commissioner's Office.
- 24C.9 The *Contractor* shall maintain complete and accurate records and information as necessary to fulfil its obligations under Clause 24C.8.

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- 24C.10 The *Contractor* shall allow for audits of its Data Processing activity by the *Client* or the *Client's* designated auditor as required to demonstrate the *Client's* compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the contract.
- 24C.11 The *Contractor* shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 24C.12 Before allowing any Sub-processor to process any Personal Data related to the contract, the *Contractor* must:
- 24C.12.1 notify the *Client* in writing of the intended Sub-processor and processing;
- 24C.12.2 obtain the written consent of the *Client*;
- 24C.12.3 enter into a written contract with the Sub-processor which give effect to the terms set out in this Clause such that they apply to the Sub- processor; and
- 24C.12.4 provide the *Client* with such information regarding the Sub- processor as the *Client* may reasonably require.
- 24C.13 The *Contractor* shall remain fully liable for all acts or omissions of any Sub-processor.
- 24C.14 The *Contractor* may, at any time on not less than 30 Business Days' notice, revise this Clause 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).
- 24C.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Client* may on not less than 30 Business Days' notice to the *Contractor* amend the contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 24C.16 Any contract amendments resulting from Clause 24C.14 and/or 24C.15 shall be conducted in accordance with any change control procedure as set out in the contract."
- 25A Insert a new Clause 25A:

### **"Decoupling Clause - Subcontracting With The Crown**

- 25A.1 If the *Contractor* shall enter into any other contract with the Crown relating in any way to the subject matter of the 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:
- 25A.1.1 give the *Contractor* any right under the contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the *Client*;

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- 25A.1.2 affect, modify, reduce or extinguish either the obligations of the *Contractor* or the rights or remedies of the *Client* (including without limitation the right to liquidated damages under the contract); or
- 25A.1.3 be taken to amend, add to, delete or waive any term or condition of the contract.”
- 26.5 Insert a new Clause 26.5:
- 26.5.1.1 Number not used.
- 26.5.1.2 Number not used.
- 26.5.1.3 Number not used.
- 26.5.1.4 Number not used.

### Apprenticeships

- 26.5.2.1 The *Contractor* takes all reasonable steps to employ apprentices, and reports to the *Client* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *works*.
- 26.5.2.2 The *Contractor* takes all reasonable steps to ensure that no less than the percentage of its employees as stated in the Scope (the “**Apprenticeship Percentage**”) are on formal apprenticeship programmes or that a similar proportion of hours worked in delivering the *works*, (which may include support staff and Subcontractors) are provided by employees on formal apprenticeship programmes.
- 26.5.2.3 The *Contractor* makes available to its employees and Subcontractors working on the contract, information about the Government’s Apprenticeship programme and wider skills opportunities.
- 26.5.2.4 The *Contractor* provides any further skills training opportunities that are appropriate for its employees engaged in carrying out the *works*.
- 26.5.2.5 The *Contractor* provides a written report detailing the following measures in its regular contract management monthly reporting cycle and is prepared to discuss apprenticeships at its regular meetings with the *Project Manager*:
- the number of people during the reporting period employed on the contract, including support staff and Subcontractors,
  - the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process,
  - the percentage of all employees taking part in an apprenticeship programme,
  - if applicable, an explanation from the *Contractor* as to why it is not managing to meet the specified percentage target,

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- actions being taken to improve the take up of apprenticeships,
- other training/skills development being undertaken by employees in relation to this contract, including:
  - (i) work experience placements for 14 to 16 year olds;
  - (ii) work experience /work trial placements for other ages;
  - (iii) student sandwich/gap year placements;
  - (iv) graduate placements;
  - (v) vocational training;
  - (vi) basic skills training; and
  - (vii) on site training provision/ facilities.”

26.6 Insert a new Clause 26.6:

### ““Small and Medium Sized Enterprises (SMEs)

- 26.6.1 The *Contractor* is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no less than the percentage of the Subcontractors stated in Schedule 5 (the “**SME Percentage**”) are SMEs or that a similar proportion of the Defined Cost of the *works* is undertaken by SMEs.
- 26.6.2 The *Contractor* is required to report to the *Client* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost of the *works* that has been undertaken by SMEs.
- 26.6.3 Where available, the *Contractor* is required to tender its Subcontracts using the same online electronic portal as was provided by the *Client* for the purposes of tendering this contract.
- 26.6.4 In relation to Subcontractors:
- 26.6.4.1 The *Contractor* has selected Subcontractors to Provide the Works in accordance with a subcontracting plan as required contemplated in the Scope (“**Subcontractor Management Plan**”).
- 26.6.4.2 The provisions contained in the Subcontractor Management Plan do not limit or otherwise effect the *Contractor*’s other obligations contained in this contract.
- 26.6.4.3 Where the *Contractor* (and/or any Subcontractor) proposes to change a Subcontractor, engage an additional subcontractor, change, modify, vary and/or extend a current subcontract and/or let an additional subcontract, the Contractor shall, submit to the *Project Manager* its proposed plan for the work to be performed or for the supplies to be provided under that subcontract (or proposed subcontract (as the case may be)), including, in

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the case of an additional subcontract, information about the proposed Subcontractor equivalent to the information the *Contractor* is required to provide under the Subcontractor Management Plan. Where the subcontract is intended to be placed on a fixed or firm price basis agreed at the outset following single tender action the plan shall be that information submitted in support of the *Contractor's* price proposals and referenced in a contract pricing statement.

- 26.6.4.4 Where the Subcontractor Management Plan identified a requirement to compete, the Subcontractor Management Plan should identify each sub-system, package of work, service and/or purchase of components and/or raw materials etc. for which the *Contractor* intends to seek (or require the relevant Subcontractor to seek) competitive tenders which are expected to lead to an order, or orders, in excess of two hundred thousand pounds (£200,000) under that subcontract (or proposed subcontract (as the case may be)) (each a “**Tender Requirement**”). The *Contractor* shall provide to the *Project Manager* (in each case to provide the *Client* with a reasonable period of time to enable it to assess the relevant information and to also enable the *Client* to enter into dialogue with the *Contractor* to obtain any required additional information, should the *Client* elect to do so) details of the approximate value of each Tender Requirement, together with the proposed list of tenderers involved in each case and information about each of the proposed tenderers equivalent to the information the *Contractor* is required to provide under the Subcontractor Management Plan, for approval before any subcontract is entered into by the *Contractor* and/or any subcontractor (as the case may be) and/or any order or orders are issued by the *Contractor* and/or any Subcontractor (as the case may be). Within ten (10) Business Days of receipt of this element of the plan, or as otherwise agreed, the *Project Manager* will notify the *Contractor* whether there are any special circumstances which might require, for example, the employment of a wider or narrower field of tenderers or for the *Project Manager* to oversee the conduct of the competitive tender and to approve the selection of the subcontractor concerned.
- 26.6.4.5 The *Contractor* shall notify the *Project Manager* in writing if it wishes to replace a subcontractor or contract with additional subcontractors after the first *access date* by submitting an updated version of the Subcontractor Management Plan showing the proposed changes in relation to the proposed replacement subcontractor or additional subcontractors to the *Project Manager* for approval, and the *Contractor* shall not replace such subcontractor and/or contract with additional subcontractors without the prior written approval of the *Project Manager*.
- 26.6.4.6 If requested by the *Project Manager* within ten (10) Business Days of receipt of the *Contractor's* notice, the *Contractor* shall also provide any further information reasonably requested by the *Project Manager*.

26.7 Number not used.

26.8 Insert a new Clause 26.8:

**“Subcontracting and prompt payment**

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- 26.8.1 Subcontracting any part of the contract shall not relieve the *Contractor* of any of the Contractor's obligations, duties or liabilities under the contract.
- 26.8.2 Where the *Contractor* enters into a subcontract he shall cause a term to be included in such Subcontract:
- 26.8.2.1 providing that where the Subcontractor submits an invoice to the *Contractor*, the *Contractor* will consider and verify that invoice in a timely fashion;
- 26.8.2.2 providing that the *Contractor* shall pay the Subcontractor any sums due under such an invoice no later than a period of 30 days from the date on which the *Contractor* has determined that the invoice is valid and undisputed;
- 26.8.2.3 providing that where the *Contractor* fails to comply with paragraph 26.8.2.1 above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of paragraph 26.8.2.2 after a reasonable time has passed; and
- 26.8.2.4 requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as Clauses 26.8.2.1 to 26.8.2.4 of this Clause."
- 26.9 Insert new Clause 26.9:

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

- 26.9.1 This Clause shall not apply:
- 26.9.1.1 where pursuant to Regulation 37(3) the *Client* 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 Commencement Date; or
- 26.9.1.2 in relation to any Sub-contract or Sub-Contracts which the *Contractor* intends to award to any third party or third parties after the Commencement Date, where pursuant to Regulation 37(3) the *Client* 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).
- 26.9.2 Subject to Clause 26.9.1, where the *Contractor*, after the Commencement Date, elects to advertise the subject matter of any Sub-contract with the view to appointing one or more Sub-Contractors, it shall (unless the *Client* otherwise agrees in writing):
- 26.9.2.1 promptly notify the *Client*, if the *Contractor* intends to award a Sub-contract;
- 26.9.2.2 publish an advertisement on (and provide all information required by) the Defence Sourcing Portal in respect of each and any Sub-contract opportunity;
- 26.9.2.3 within 30 (thirty) days after the date on which such Sub-contract shall have been awarded update the relevant advertisement on the Defence Sourcing

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Portal 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;

- 26.9.2.4 provide reports to the Commercial Officer, if so requested, on the number, type and value of Sub-contract opportunities placed on the Defence Sourcing Portal and awarded in its supply chain during the Contract Period; and
- 26.9.2.5 promote the Defence Sourcing Portal to all Sub-Contractors and encourage those operators to register on it.
- 26.9.3 The *Client* may issue guidance to the *Contractor* on how to advertise *Sub-contract* opportunities on the Defence Sourcing Portal 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.”

27.5 Insert a new Clause 27.5:

### “Confidentiality and Information Sharing

- 27.5.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:
  - 27.5.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
  - 27.5.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
  - 27.5.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information,
  - 27.5.1.4 notify the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 27.5.2 The Clause above shall not apply to the extent that:
  - 27.5.2.1 such disclosure is a requirement of the *law of the contract* placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause Z10 (Freedom of Information),
  - 27.5.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
  - 27.5.2.3 such information was obtained from a third party without obligation of confidentiality,

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27.5.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or

27.5.2.5 it is independently developed without access to the other party's Confidential Information.

27.5.3 The *Contractor* may only disclose the *Client's* Confidential Information to the *Contractor* Personnel who are directly involved in the carrying out of the *works* and who need to know the information, and shall ensure that such *Contractor* Personnel are aware of and shall comply with these obligations as to confidentiality.

The *Contractor* shall not, and shall procure that the *Contractor* Personnel do not, use any of the *Client* Confidential Information received otherwise than for the purposes of this contract.

27.5.4 The *Contractor* may only disclose the *Client* Confidential Information to the *Contractor* Personnel who need to know the information, and shall ensure that such *Contractor* Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any *Contractor* Personnel causes or contributes (or could cause or contribute) to the *Contractor* breaching its obligations as to confidentiality under or in connection with this contract, the *Contractor* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Contractor* Personnel, the *Contractor* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Contractor* is taking appropriate steps to comply with this Clause, including copies of any written communications to and/or from *Contractor* Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Contractor* Personnel in connection with obligations as to confidentiality.

27.5.5 At the written request of the *Client*, the *Contractor* shall procure that those members of the *Contractor* Personnel identified in the *Client's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

27.5.6 Nothing in this contract shall prevent the *Client* from disclosing the *Contractor's* Confidential Information:

27.5.6.1 to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body;

27.5.6.2 to any consultant, contractor or other person engaged by the *Client* or any person conducting an Office of Government Commerce gateway review;

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27.5.6.3 for the purpose of the examination and certification of the *Client's* accounts; or

27.5.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources.

and for the purposes of the foregoing, disclosure of the Contractor's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this Clause 27.5.6.

27.5.7 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or *Subcontractor* to whom the Contractor's Confidential Information is disclosed pursuant to the above Clause is made aware of the *Client's* obligations of confidentiality.

27.5.8 Nothing in this Clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR

27.5.9 The *Client* may disclose the Confidential Information of the *Contractor*:

27.5.9.1 on a confidential basis to any Crown Body for any proper purpose of the *Client* or the relevant Crown Body;

27.5.9.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

27.5.9.3 to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

27.5.9.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any Crown Body (including any benchmarking organisation) for any purpose connected with this contract;

27.5.9.5 on a confidential basis for the purpose of the exercise of its rights under this contract;

27.5.9.6 on a confidential basis to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

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

27.6 Insert a new Clause 27.6:

### **"Health and Safety**

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27.6.1 The *Contractor* will be the Principal *Contractor* and Principal Designer as defined by and for the purposes of the CDM Regulations.

27.6.2 The *Contractor* warrants that it:

27.6.2.1 is fully aware of his obligations as Principal *Contractor* and Principal Designer under the CDM Regulations and possesses the requisite degree of competence and level of resources to meet those obligations;

27.6.2.2 will ensure that all Subcontractors and the *Contractor's* design consultant are fully aware of their obligations under the CDM Regulations (in particular the provisions of Regulation 11 and 18 being duties of designers) and are fully competent and are adequately resourced to meet those obligations."

27.7 Insert a new Clause 27.7:

### **"Quality Assurance (with deliverable quality plan)**

27.7.1 The *Contractor* shall submit the Deliverable Quality Plan as defined in AQAP 2105 to the *Client* in accordance Scope DID 004.

27.7.2 When agreed by the *Client*, the Deliverable Quality Plan shall be incorporated into the contract. Notwithstanding that the Deliverable Quality Plan will have been seen and agreed by the *Client*, the *Contractor* shall be solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan."

27.8 Insert a new Clause 27.8:

### **"Access and facilities to be provided by the *Contractor***

27.8.1 The *Contractor* shall provide to the *Client's* Representatives, following reasonable notice, relevant accommodation / facilities, at no direct cost to the *Client*, and all reasonable access to its premises for monitoring the Contractor's progress and quality standards in performing the contract.

27.8.2 As far as reasonably practical, the *Contractor* shall ensure that the provisions of Clause 27.8.1 are included in their subcontracts with those suppliers identified in the contract. The *Client*, through the *Contractor*, shall arrange access to such subcontractors."

27A Add new Clause 27A:

### **"Progress reports**

27A.1 The *Contractor* shall supply the *Client* with reports on the progress of the contract as required in Scope DID-008.

27A.2 Reports shall detail as a minimum:

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- 27A.2.1 The quality and assurance requirements of Scope DID-004 – Deliverable Quality Plan.
- 27A.2.2 The requirements of Scope DID-005 – Risk, Issue, & Opportunity Management Plan.
- 27A.2.3 Any other information specified in the contract or the Scope.
- 27A.2.4 Any other information reasonably requested by the *Client*.
- 27A.3 Reports shall be provided to the addressees in boxes 1 and 2 of the DEFFORM 111 (Part 6, Schedule 2 of this contract) and in the form and frequency specified in the contract.
- 27B Insert a new Clause 27B:

### “Acceptance

- 27B.1 Unless specified in the Scope as being a different period, acceptance of an Article occurs at the time and in accordance with the procedure specified in this contract on the date that is ten (10) Business Days from delivery unless the *Supervisor* has rejected such Article.
- 27B.2 The *Supervisor* shall not have accepted an Article:
- 27B.2.1 merely because the *Supervisor* or the *Client* asks for, or agrees to, its repair by or under an arrangement with the *Contractor*; or
- 27B.2.2 unless otherwise specified in this contract, merely because the Article has been delivered to a Third Party.
- 27B.3 The *Supervisor* shall not be deemed to have accepted an Article unless it has had a reasonable opportunity to examine it after delivery for the purpose of ascertaining whether it is in conformity with this contract.
- 27B.4 Acceptance of any Article does not limit or in any way affect the *Contractor's* obligations to remedy any defects which are discovered in any Articles after the date such Article was accepted.
- 27B.5 Where software is to be supplied as a requirement of this contract it will be subject to the provisions of Clauses 27B and 27C as if it was an Article.
- 27B.6 For the avoidance of doubt, title and risk in an Article will remain with the *Contractor* until such time as the Article has been delivered to the *Client* in accordance with this contract.
- 27B.7 Where following such delivery, the relevant Article is rejected by the *Supervisor*, then title and risk will, on the date the Article is rejected be allocated so that title in the Article will remain with the *Client* and risk in the Article will be with the *Contractor* (until such time as the relevant Article is again delivered to the *Client* in accordance with this contract).

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27C Insert a new Clause 27C:

### **“Rejection**

- 27C.1 Prior to acceptance by the *Supervisor*, the *Supervisor* may reject any Article (whether or not after inspection) which does not conform with the requirements of this contract.
- 27C.2 The *Supervisor* may (whether or not after inspection) reject the whole of any consignment of the Articles if:
- 27C.2.1 a reasonable proportion or percentage of such Articles in that consignment does not conform with the requirements of this contract; or
- 27C.2.2 samples, whether of the Articles or of the material in the Articles, taken randomly from that consignment do not conform with the requirements of this contract.
- 27C.3 For the purposes of this clause, an item of Issued Property in connection with which the *Contractor* is required to perform obligations in accordance with this contract shall, following completion of the relevant part of the Scope, be subject to rejection as if it was an Article, but without prejudice to the *Client's* proprietary and other rights in that item of Issued Property.
- 27C.4 The Contractor shall at its own expense and within ten (10) Business Days of being notified of the rejection, or within any other applicable period specified in this contract, remove any such Article and/or consignment which the *Supervisor* has rejected.
- 27C.5 If the *Contractor* fails to remove the rejected Article or consignment, the *Client* may return it to the Contractor at the Contractor's risk and expense.
- 27C.6 The *Contractor* shall at its own expense and within the contractual period for delivery, or within such further reasonable period as the *Project Manager* may allow, supply and deliver Articles that conform with the requirements of this contract.
- 27C.7 The *Contractor* may object in writing to a notification of rejection by the *Supervisor* within the period specified in clause 27C.4. If the objection is not resolved within a reasonable time, it shall be treated as a dispute. Unless otherwise agreed the *Contractor* shall not remove the Articles which are the subject of the rejection notice unless and until the objection or dispute has been resolved.

27D Number not used.

27E Insert new Clause 27E:

### **“Contractor's records**

- 27E.1 The *Contractor* and its Subcontractors shall maintain all records specified in and connected with the contract (expressly or otherwise), and make them available to the *Client* when requested on reasonable notice.

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- 27E.2 The *Contractor* and its Subcontractors 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:
- 27E.2.1 to enable the National Audit Office to carry out the *Client's* statutory audits and to examine and/or certify the *Client's* annual and interim report and accounts; and
- 27E.2.2 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 *Client* has used its resources.
- 27E.3 With regard to the records made available to the *Client* under Clause 1 of this Clause, and subject to the provisions of Clause 19, the *Contractor* shall permit records to be examined and if necessary copied, by the *Client*, or Representative of the *Client*, as the *Client* may require.
- 27E.4 Unless the contract specifies otherwise the records referred to in this Clause shall be retained for a period of at least 6 years from the:
- 27E.4.1 end of the contract term;
- 27E.4.2 termination of the contract; or
- 27E.4.3 final payment, whichever occurs latest.”
- 27F Insert a new Clause 27F:

### “Progress Meetings

- 27F.1 The *Contractor* shall comply with the *Client's* requirements regarding meetings contained at Annex 4 of the Scope.
- 27G Insert a new Clause 27G:

### “SME Spend data collection

- 27G.1 The *Contractor* shall by 30 June (or such alternative date agreed between the parties (acting reasonably) in writing having regard for the end date of the Contractor's financial year)) each year during the Contract Period at (subject to the operation of Clause 28A.4) no additional cost, charge and expense to the *Client* provide to the *Client* the information identified in DEFFORM 139 (Part 6, Schedule 5 of this contract) (as amended by the *Client* from time to time and with each such amended version taking effect in accordance with Clause 27.3), including:

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- 27G.1.1 the total Revenue on and prior to the Reporting Date in respect of the relevant financial year immediately prior to the Reporting Date,
- 27G.1.2 the total value of *Sub-contract* Revenue paid under the contract in respect of the relevant financial year immediately prior to the Reporting Date; and
- 27G.1.3 the total value of *Sub-contract* Revenue paid to SMEs and VCSEs in respect of the relevant financial year immediately prior to the Reporting Date.
- 27G.2 The *Client* may issue from time to time guidance to the *Contractor* in relation to the completion of DEFFORM 139 (Part 6, Schedule 5 of this contract) (and the *Contractor* shall not unreasonably refuse to comply with any such guidance so issued when completing such DEFFORM and complying with this Clause).
- 27G.3 The *Client* may at any time during the Contract Period change the reporting template in DEFFORM 139 (Part 6, Schedule 5 of this contract), provided that the *Client* shall have given a minimum of 30 (thirty) days' advance notice in writing of the scope and nature of such change or changes. The changes may include the data required or format of the report or both. The parties agree that no such change shall constitute a formal amendment of the contract.
- 27G.4 Where the *Contractor* is reasonably likely to incur additional costs arising from any change to the reporting template in DEFFORM 139 (Part 6, Schedule 5 of this contract) notified by the *Client* to the *Contractor* pursuant to Clause 4, the *Contractor* may notify the *Client* to such effect providing at the same time a *Contractor* Change Proposal (as defined Clause 13.11) including the information identified in Clause 13.11. On and from the date on which the *Client* receives such notification and proposal the parties shall operate, and comply with their respective obligations under, Clauses 13.11.3 and 13.14 in relation to such change (but not Clauses 13.11.1 and 13.11.2), which shall not apply in relation to such change) and for the purposes of this Clause all references to "*Contractor* Proposal" shall be construed as references to the "*Contractor* Change Proposal" and "*Client* Notice of Change" shall be construed as references to the *Client's* notice issued pursuant to Clause 4.
- 27G.5 Notwithstanding the requirements of Clause 27E, the *Contractor* shall retain the information identified in Clause 27G.1 of this Clause and supporting records for a period of 24 (twenty-four) months commencing on the date of their provision pursuant to Clause 27G.1."

27H Insert new Clause 27H:

### **"Timber and wood derived products**

- 27H.1 All Timber and Wood-Derived products supplied by the *Contractor* under the contract (including all Timber and Wood-Derived Products supplied by Subcontractors):
- 27H.1.1 shall comply with the contract Scope; and

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- 27H.1.2 must originate either:
- 27H.1.2.1 from a Legal and Sustainable source; or
- 27H.1.2.2 from a FLEGT-licensed or equivalent source.
- 27H.2 In addition to the requirements of Clause 27H.1 above, all Timber and Wood-Derived products supplied by the *Contractor* under the contract (including all Timber and Wood-Derived products supplied by Subcontractors) shall originate from a forest source where management of the forest has full regard for:
- 27H.2.1 identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- 27H.2.2 mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- 27H.2.3 safeguarding the basic labour rights and health and safety of forest workers.
- 27H.3 If requested by the *Client*, the *Contractor* shall provide to the *Client* evidence that the Timber and Wood-Derived Products supplied to the *Client* under the contract complies with the requirements of Clause 27H.1 or Clause 27H.2, or both.
- 27H.4 The *Client* reserves the right at any time during the execution of the contract and for a period of 5 years from final delivery under the contract to require the *Contractor* to produce the evidence required for the *Client's* inspection within 14 days of the *Client's* request.
- 27H.5 If the *Contractor* has already provided the *Client* with the evidence required under Clause 27H.4, the *Contractor* may satisfy these requirements by giving details of the previous notification and confirming the evidence remains valid and satisfies the provisions of Clauses 27H.2 and 27H.3.
- 27H.6 The *Contractor* shall maintain records of all Timber and Wood-Derived Products, delivered to and accepted by the *Client*, in accordance with Clause 27E.
- 27H.7 Notwithstanding Clause 27H.4, if exceptional circumstances render it strictly impractical for the *Contractor* to record evidence of proof of timber origin for previously used Recycled Timber, the *Contractor* shall support the use of this Recycled Timber with:
- 27H.7.1 a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
- 27H.7.2 an explanation of the circumstances that rendered it impractical to record evidence of proof of timber origin.
- 27H.8 The *Client* reserves the right to decide, except where in the *Client's* opinion the timber supplied is incidental to the requirement and from a low risk

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source, whether the evidence submitted to it demonstrates compliance with Clause 27H.2 and Clause 27H.3. In the event that the *Client* is not satisfied, the *Contractor* shall commission and meet the costs of an "Independent Verification" and resulting report that will:

- 27H.8.1      verify the forest source of the timber or wood; and
- 27H.8.2      assess whether the source meets the relevant criteria of Clause 27H.3.
- 27H.9        The statistical reporting requirement at Clause 27H.11 applies to all Timber and Wood-Derived Products delivered under the contract. The *Client* reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Clause 13.10.
- 27H.10      The *Contractor* shall provide to the *Client*, using DEFFORM 691A (27H.12) the data or information the *Client* requires in respect of Timber and Wood-Derived Products delivered to the *Client* under the contract, or in respect of each Order in the case of a Framework Agreement, or at such other frequency as stated in the contract. The *Contractor* shall send all completed DEFFORMs 691A (27H.12), including Nil Returns where appropriate, to the *Client's* Commercial Branch identified in the Appendix to contract.
- 27H.11      DEFFORM 691A (27H.12) may be amended by the *Client* from time to time, in accordance with Clause 13.10.

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27H.12

**Timber and Wood-Derived Products Supplied under the contract – Data Requirements**

**contract No:** \_\_\_\_\_

Schedule of Requirements item and timber product type	Volume of timber delivered to the <i>Client</i> with FSC, PEFC or equivalent evidence	Volume of timber delivered to the <i>Client</i> with other evidence	Volume (as delivered to the <i>Client</i> ) of timber without evidence of compliance with Government Timber Procurement Policy	Total volume of timber delivered to the <i>Client</i> under the contract

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27I Insert new Clause 27I:

**“Equality**

- 27I.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.
- 27I.2 Without prejudice to the generality of the obligation in *Clause* 27I.1 above, the *Contractor* shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where the contract is being performed.
- 27I.3 The *Contractor* agrees to take reasonable efforts to secure the observance of the provisions of this Clause by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the contract.
- 27I.4 The *Contractor* agrees to take reasonable efforts to reflect this Clause in any *Sub-contract* that it enters into to satisfy the requirements of the contract and to require its subcontractors to reflect this Clause in their subcontracts that they enter into to satisfy the requirements of the contract.”

27K Insert Clause 27K:

**“Use of Asbestos**

**Prohibition of Asbestos**

- 27K.1 Subject to Clauses 27K.3 and 27K.4 below, no asbestos of any type shall be incorporated into any Articles (as defined in Clause 11) other material to be supplied under the contract.

**Notification**

- 27K.2 The *Contractor* shall notify the *Client* in writing as soon as they become aware that Asbestos may be incorporated in Articles or other materials to be supplied or processed during performance of the contract.

**Exemption**

- 27K.3 The Secretary of State may issue a Defence Exemption Certificate under the REACH Enforcement Regulations 2008 (the Regulations) exempting the *Contractor* from parts of the Regulations. The *Contractor* may incorporate Asbestos into Articles and / or material supplied, or use or process it in the performance of services under the contract in accordance with the conditions set out in the Certificate.
- 27K.4 If at any stage during the lifetime of the contract, an alternative substance becomes available, the *Contractor* shall bring this to the attention of the *Client* immediately, by notice in writing. The *Client* shall then determine, in consultation with the *Contractor* and the Health and Safety Executive where appropriate, whether the substance would be suitable for incorporation into

any Articles or material which have yet to be supplied under the contract. The *Client* may require the *Contractor* to suspend any further production of such Articles or material or delivery of services, pending such determination, thereby relieving the *Contractor* (for the time being) of any contractual obligations to provide such Articles, material or services. In the event that the *Client* determines that the alternative substance would be suitable for incorporation into such Articles or material or in the performance of services in lieu of Asbestos, the *Client* may vary its requirements in the light of any such determination.

27K.5 If, at any stage during the lifetime of the contract, the Secretary of State issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with the Regulations, the effect of which is that any further supply of the Articles or delivery of services under the contract would be prohibited by the Regulations, the *Contractor* shall, on becoming aware of the further certificate, immediately refrain from incorporating Asbestos into any such Articles or performing the service and shall provide the *Client* with written confirmation of this within forty-eight hours. The *Client* reserves the right to vary its requirements in the light of any such decision.

27K.6 Where the contract is for the provision of a service, the *Contractor* shall obtain from the Health and Safety Executive or the Secretary of State for Defence as appropriate, an exemption from the requirements of the COAR under Regulation 29 or 30 where an exemption is necessary for performance of the contract.”

27L Add a new Clause 27L:

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

27L.1 Introduction

27L.1.1 The *Contractor* shall provide all jigs, tools, patterns moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the manufacture of the Articles or for the performance of any other work in accordance with the contract Schedule of Requirements, unless supplied by the *Client* under the terms of Clause 70.B.

27L.1.2 For the purposes of this Clause, “Special Jigs, Tools Etc” means all special jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the manufacture of the Articles or for the performance of any other work, which are not tools of the trade, as used by the *Contractor* in the performance of the contract.

27L.1.3 If the Contract Price has yet to be agreed, the cost of Special Jigs, Tools Etc will not be accepted by the *Client* as a direct charge to the contract unless approved in writing. The *Contractor* may make a written application to the *Client* that certain hardware or software, or both are special to the requirements of the contract and that their provision should be met as a direct charge to the contract as Special Jigs, Tools Etc. If the *Client* accepts the application it shall do so in writing. The *Contractor* shall not seek approval for Special Jigs, Tools Etc where the Contract Price is established, or where

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these are available under other contracts he already holds from the *Client*, either under the terms of this Clause or as Issued Property under Clause 70.B. This Clause shall not apply to the refurbishment of any Jigs, Tools Etc already held as Issued Property.

- 27L.2 Pricing
- 27L.2.1 Unless specified otherwise in the contract, the Contract Price shall include an appropriate amount to enable the *Contractor* to recover his expenditure on Special Jigs, Tools Etc including the cost of maintenance and calibration under Clause 27L.6.2.
- 27L.2.2 The *Contractor* shall not claim assistance from other Government funds (e.g. Regional Development Grants or selective financial assistance) or other third parties towards the cost of any Special Jigs, Tools Etc.
- 27L.3 Passing of Property
- 27L.3.1 Except where otherwise specified in the contract the Special Jigs, Tools Etc shall become the property of the *Client*.
- 27L.3.1.1 where Clause 70A forms part of the contract, in accordance with that Clause as if they were Articles;
- 27L.3.1.2 where the *Client* authorises the *Contractor* to utilise the Special Jigs, Tools Etc for the production of articles for a third party in advance of their being used for the production of Articles under the contract, upon delivery of the first article so produced for the third party;
- 27L.3.1.3 in all other cases upon acceptance of the first Article, as defined within the contract, or upon contract completion, whichever is the earlier.
- 27L.3.2 Where property in the Special Jigs, Tools Etc passes to the *Client* under sub-Clauses 27L.3.1.2 or 27L.3.1.3 and they are still required to complete the contract they shall be transferred to the Public Store Account as contract Support Items and treated thereafter as Issued Property under the terms of Clause 70.B.
- 27L.4 Acceptance
- Acceptance shall occur at the time the first Article produced with the Special Jigs, Tools Etc is accepted in accordance with Clause 27B or at the time stated in the contract.
- 27L.5 Modifications
- Notwithstanding the passing of property to the *Client* under Clause 6 and their transfer to the Public Store Account under Clause 27L.3.2, the *Contractor* shall be free to modify the Special Jigs, Tools Etc as he considers necessary in order to produce the Articles or to perform the contract work, and the *Client's* approval of those modifications shall not be required.
- 27L.6 Accounting and Control

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- 27L.6.1 The *Contractor* shall account for and control the Special Jigs, Tools Etc in accordance with the provisions of Clause 27L.3.2. Pending the transfer to the Public Store Account, the *Contractor* shall:
- 27L.6.1.1 maintain a list of Special Jigs, Tools Etc procured or manufactured by the *Contractor*;
- 27L.6.1.2 make the list available to the *Client* for inspection by the *Client's* Asset Accounting Centre;
- 27L.6.1.3 maintain the list for three years, or for such other period as is specified in the contract, after any disposal of the Special Jigs, Tools Etc where not transferred to the Public Store Account in accordance with Clause 70.B.
- 27L.6.1.3 forward the list to the *Client's* Commercial Officer following first Article acceptance and prior to transfer of Special Jigs, Tools Etc to the Public Store Account;
- The *Contractor* shall remove from the list any Special Jigs, Tools Etc transferred to the Public Store Account under Clause 27L.3.2.
- 27L.6.2 The *Contractor* shall be responsible for safe custody, maintenance and calibration necessary to retain the Special Jigs, Tools Etc in good order, until transferred to the Public Store Account, delivered or disposed of in accordance with written disposal instructions given by the *Client*.
- 27L.7 Availability
- 27L.7.1 Once property in the Special Jigs, Tools Etc has passed to the *Client* in accordance with sub-clause 27L.6.1.2 or 27L.6.1.3 of this Clause, the *Contractor* shall, if required, deliver the Special Jigs, Tools Etc to an individual, company, factory, or Government Establishment named by the *Client*. The *Contractor* shall not be entitled to any further payment for delivering the Special Jigs, Tools Etc other than for the recovery of packing and carriage costs reasonably incurred.
- 27L.7.2 This Clause shall not entitle the *Client* to require the *Contractor* to dispose of the Special Jigs, Tools Etc to the prejudice of the contract or other contracts held by the *Contractor* with the *Client* or with another customer, provided the *Client's* approval for that use in connection with a contract with another customer has been given in accordance with Clause 27L.9 below.
- 27L.7.3 Where the *Contractor* holds no contracts for articles or services for which the Special Jigs, Tools Etc will be used, but having received the *Client's* approval in accordance with Clause 27L.9 below, has made a firm written offer to a third party to supply those articles or perform those services, the *Client* shall not be entitled to dispose of the Special Jigs, Tools Etc until the *Contractor's* offer has expired and no commitment to supply those articles or perform those services remains.
- 27L.8 Disposal
- 27L.8.1 As soon as the Special Jigs, Tools Etc cease to be required by the *Contractor* to meet the *Client's* requirements or for use as specified in Clause 27L.7.2

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he shall notify the *Client*. The *Client* will instruct the *Contractor* as to their disposal and, where appropriate, the method of crediting the *Client* with the proceeds of them less any cost of disposal incurred by the *Contractor*. The *Client's* disposal instructions shall be given within 3 months, or other period stated in the contract, from receipt of the *Contractor's* notification.

27L.8.2      Should the *Client* fail to issue disposal instructions within this period, a fair and reasonable amount will be agreed for storage and, as instructed by the *Client*, maintenance and calibration of the Special Jigs, Tools Etc, this sum to be a direct charge against the contract or allocated as an indirect charge in accordance with the *Contractor's* approved Questionnaire on the Method and Allocation of Costs.

27L.9          Use for other than the purposes of the *Client*

The *Contractor* shall not use the Special Jigs, Tools Etc for any purposes other than those of the *Client* without first obtaining the written approval of the *Client* and in accordance with the terms, including payment, for that other use as stated in a commercial exploitation, or other, agreement between the *Contractor* and the *Client*. In subcontracts which include the provisions of this Clause the *Contractor* shall require that the written approval be obtained direct from the *Client* by the *Subcontractor*."

27M          Number not used.

27N          Add new Clause 27N:

### **"Counterfeit Materiel**

27N.1          For the purposes of this Condition, "Counterfeit Materiel" shall mean any Article or any part thereof whose origin, age, composition, configuration, certification status or other characteristic (including whether or not such Article or part has been used previously) has been falsely represented by:

27N.1.1 misleading marking of the materiel, labelling or packaging;

27N.1.2 misleading documentation; or

27N.1.3 any other means, including failing to disclose information;

except where it has been demonstrated that the false representation was not the result of dishonesty by the *Contractor* or any party within the *Contractor's* supply chain.

27N.2          Where the *Client* suspects that any Article or consignment of Articles contains Counterfeit Materiel, it shall:

27N.2.1 notify the *Contractor* of its suspicion and reasons therefor;

27N.2.2 where reasonably possible, and if requested by the *Contractor* within 10 business days of such notification, (at the *Contractor's* own risk and expense and subject to any reasonable controls specified by *Client*) afford the *Contractor* the facility to (i) inspect the Article or consignment and/or (ii) obtain a sample thereof for validation or testing purposes;

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27N.2.3 give the *Contractor* a further 20 business days or such other reasonable period agreed by the *Client*, from the date of the inspection at 2.b(i) or the provision of a sample at 27N.2.2(ii), to comment on whether the Article or consignment meets the definition of Counterfeit Materiel; and

27N.2.4 determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Article or consignment meets the definition of Counterfeit Materiel.

Where the *Client* has determined that the Article, part or consignment of Articles contain Counterfeit Materiel then it may reject the Article, part or consignment under Clause 27C.

27N.3 In addition to its rights under Clause 27C, where the *Client* reasonably believes that any Article or consignment of Articles contains Counterfeit Materiel, it shall be entitled to:

27N.3.1 retain any Counterfeit Materiel; and/or

27N.3.2 retain the whole or any part of such Article or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Article, or consignment;

and such retention shall not constitute acceptance under Clause 27C.

27N.4 Where the *Client* intends to exercise its rights under Clause 3 of this Condition it shall where reasonable permit the *Contractor*, within a period specified by the *Client*, to arrange at its own risk and expense and subject to any reasonable controls specified by *Client*, for:

27N.4 the separation of Counterfeit Materiel from any Article or part of an Article; and/or

27N.4 the removal of any Article or part of an Article that the *Client* is satisfied does not contain Counterfeit Materiel.

27N.5 In respect of any Article, consignment or part thereof that is retained in accordance with Clause 27N.3 of this Clause, including where the *Client* permits the *Contractor* to remove non-Counterfeit Materiel under Clause 27N.4 but the *Contractor* fails to do so within the period specified by the *Client* and subject to Clause 27N.9, the *Client* shall be entitled to exercise any, all, or any combination of, the following rights:

27N.5.1 to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;

27N.5.2 to pass it to a relevant investigatory or regulatory *Client*;

27N.5.3 to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the *Contractor*; and/or

27N.5.4 to recover the reasonable costs of testing, storage, access, and/or disposal of it from the *Contractor*.

Exercise of the rights granted at Clause 27N.5.1, 27N.5.2 and 27N.5.3 shall not constitute acceptance under Clause 27C.

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- 27N.6 Any scrap or other disposal payment received by the *Client* shall be off set against any amount due to the *Client* under Clause 27N.5.4. If the value of the scrap or other disposal payment exceeds the amount due to the *Client* under Clause 27N.5.4, then the balance shall accrue to the *Contractor*.
- 27N.7 The *Client* shall not use a retained Article or consignment other than as permitted in this Clause.
- 27N.8 The *Client* may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- 27N.9 Where the *Contractor* has objected in writing to the notification of the rejection by the *Client* in accordance with Clause 27C.7, the *Client* shall not exercise its rights at Clause 27N.5 unless and until the objection or dispute has been resolved in favour of the *Client*. If no such written objection is received, then the *Contractor* shall be deemed to have waived any rights to object to the *Client* exercising the rights granted at Clause 27C.5.
- 27N.10 The *Contractor* shall not be entitled to any payment or compensation from the *Client* as a result of the *Client* exercising the rights set out in this Condition except where it has been determined by the contract dispute resolution procedure that the *Client* has made an incorrect determination under paragraph 2d. In such circumstances the *Client* shall reimburse the *Contractors* reasonable costs of complying with Clause 2 of this Condition."

28A Insert new Clause 28A:

### "Cyber

#### **Client Obligations**

- 28A.2 The *Client* shall:
- 28A.2.1 determine the Cyber Risk Profile appropriate to this contract and notify the *Contractor* of the same at the earliest possible date; and
- 28A.2.2 notify the *Contractor* as soon as reasonably practicable where the *Client* reassesses the Cyber Risk Profile relating to this contract, which shall be in accordance with Clause 28A.6.

#### **Contractor Obligations**

- 28A.3 The *Contractor* shall, and shall procure that their Sub-contractors shall:
- 28A.3.1 comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan attached to this contract and for the avoidance of doubt any Cyber Implementation Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the *Client* and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect their own proprietary information;
- 28A.3.2 complete the CSM Risk Assessment Process in accordance with the *Client's* instructions, ensuring that any change in the Cyber Risk Profile is notified to any affected *Subcontractor*, and complete a further CSM Risk Assessment

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or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain or on receipt of any reasonable request by the *Client*;

- 28A.3.3 re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- 28A.3.4 having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge their obligations under this Clause in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under 28A.3.1 above and this 28A.3.4 the *Contractor* shall notify the *Client* in accordance with the notification provisions in DEFSTAN 05-138 as soon as they become aware of the conflict and the *Client* shall determine which standard or measure shall take precedence;
- 28A.3.5 comply with all Cyber Security Instructions notified to it by the *Client* as soon as reasonably practicable;
- 28A.3.6 notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a *Subcontractor* also notify the *Contractor*, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, and providing further information in phases, as full details become available;
- 28A.3.7 in coordination with their NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the *Client* and its agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the *Client* and the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
- 28A.3.8 consent to the *Client* recording and using information obtained via the Supplier Cyber Protection Service in relation to the contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Implementation Plan. For the avoidance of doubt such information shall include the cyber security accreditation of the *Contractor* and/or *Subcontractor* as appropriate; and
- 28A.3.9 include provisions equivalent to those set out in the Annex to this Clause (the "equivalent provisions") in all relevant Sub- contracts.

#### **Management Of Sub-Contractors**

- 28A.4.1 Provided that it is reasonable in all the circumstances to do so, the *Client* agrees that the *Contractor* shall be entitled to rely on the self- certification by the *Subcontractor* of their compliance with this Clause in accordance with 28A.3.1 above.

28A.4.2 Where a *Subcontractor* notifies the *Contractor* that it cannot comply with the requirements of DEFSTAN 05-138, the *Contractor* shall require a Sub-contractor to prepare and implement a Cyber Implementation Plan in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the *Contractor* and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary information of the *Subcontractor*. Where the *Contractor* has reasonably relied on the Sub-contractor's self-certification and the *Subcontractor* is subsequently found to be in breach of their obligations, the *Contractor* shall not be in breach of this Clause.

28A.4.3 The *Contractor* shall, and shall require their Sub-contractors to, include provisions equivalent to those set out in the Annex to this Clause in all relevant Sub-contracts and shall notify the *Client* in the event that they become aware of any material breach of the provisions set out in the Annex by their *Subcontractor*.

## **Records**

28A.5.1 The *Contractor* shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until 6 years after termination or end of contract term or final payment under this contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

28A.5.1.1 copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the *Contractor* and/or *Subcontractor*; and

28A.5.1.2 copies of all documents demonstrating compliance with 28A.3.5 and in relation to any notifications made under 28A.3.6 and/or investigation under 28A.3.7.

28A.5.2 The *Contractor* shall, and shall ensure that any *Subcontractor* shall, on request provide the *Client*, the *Client's* representatives and/or the Contractors NSA/DSA such access to those records under 28A.5.1 as may be required in connection with this contract.

## **Audit**

28A.6.1 In the event of a Cyber Security Incident the *Contractor* agrees that the *Client* and its representatives, in coordination with the Contractor's NSA/DSA, may conduct such audits as are required to establish (i) the cause of the Cyber Security Incident, (ii) the impact of the Cyber Security Incident, (iii) the MOD Identifiable Information affected, and (iv) the work carried out by the *Contractor* to resolve the Cyber Security Incident and to mitigate the effects, to ensure that the Cyber Security Incident is resolved to the satisfaction of the *Client* and the NSA/DSA.

28A.6.2 In addition to the rights in 28A.6.1 above the *Client* or its representatives and/or the Contractor's NSA/DSA, either solely or in any combination, may

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at any time during a period of six (6) years after termination of the contract or the end of the contract term or final payment under the contract whichever is the later, but not more than once in any calendar year , conduct an audit for the following purposes where the *Contractor* continues to hold MOD Identifiable Information:

- 28A.6.2.1 to review and verify the integrity, confidentiality and security of any MOD Identifiable Information; and
- 28A.6.2.2 to review the Contractor's and/or any Sub-contractor's compliance with their obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and
- 28A.6.2.3 to review any records created during the provision of the *Contractor* Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the *Contractor* Deliverables for the purposes of 28A.5.1.1 and 28A.5.1.2 above.
- 28A.6.3 The *Client*, acting reasonably and having regard to the confidentiality and security obligations owed by the *Contractor* to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the *Contractor* but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the *Client* any unsupervised access to any of the Contractor's information systems or electronic communications networks. The *Client* shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the *Contractor* and/or *Subcontractor* or delay the provision of the *Contractor* Deliverables and supplier information received by the *Client* in connection with the audit shall be treated as confidential information.
- 28A.6.4 The *Contractor* shall, and shall ensure that any *Subcontractor* shall on demand provide the *Client* and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
  - 28A.6.4.1 all information requested by the *Client* within the permitted scope of the audit;
  - 28A.6.4.2 reasonable access to any Sites controlled by the *Contractor* or any Associated Company used in the performance of the contract to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the *Contractor*, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
  - 28A.6.4.3 access to any relevant staff.
- 28A.6.5 The *Client* shall endeavour to (but is not obliged to) provide at least 15 calendar days' notice of its intention to conduct an audit.
- 28A.6.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit identifies a material breach of the terms of this Clause by the *Contractor* in which case the *Contractor* shall reimburse the *Client* for all the *Client's* reasonable costs incurred (which shall be evidence to the *Contractor*) in the course of the audit.

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- 28A.6.7 The *Contractor* shall in their Sub-contracts procure rights for the *Client* to enforce the terms of Clause 28A.6 of this Clause in accordance with the Contracts (Rights of Third Parties) Act 1999.

**General**

- 28A.7.1 On termination or expiry of this contract the provisions of this Clause excepting 28A.3.2 and 28A.3.3 above shall continue in force so long as the *Contractor* and/or *Subcontractor* holds any MOD Identifiable Information relating to this contract.
- 28A.7.2 Termination or expiry of this contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the contract which existed at or before the date of termination or expiry.
- 28A.7.3 The *Contractor* agrees that the *Client* has absolute discretion to determine changes to DEFSTAN 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber Security Instructions. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the *Contractor* may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Profile or both provided always that the *Contractor* shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the contract and reasonable in all the circumstances.
- 28A.7.4 Subject to 28A.7.3 above, where the *Contractor* seeks such adjustment or extension, the *Client* will proceed in accordance with Clause 13.11 or any agreed alternative change control procedure to determine the request for adjustment or extension. The *Contractor* must deliver a *Contractor* Change Proposal to the *Client* within eight (8) weeks (or other period agreed by the parties) of the occurrence of the change in DEFSTAN 05- 138 or Cyber Risk Profile or both, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the *Client* shall not be required to withdraw any *Client* Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Profile or both whether or not the *Contractor* Change Proposal is rejected. If the *Contractor* does not agree with the *Client's* determination, then the provisions of Clause 9 or any agreed alternative dispute resolution procedure provided for in the contract shall apply.
- 28A.7.5 The *Contractor* shall not recover any costs and/or other losses under or in connection with this Clause where such costs and/or other losses are recoverable or have been recovered by the *Contractor* elsewhere in this contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the *Contractor* is able to or has recovered such sums in any other provision of this contract or has recovered such costs and/or losses in other contracts between the *Contractor* and the *Client* or with other bodies.

29 Delete existing Clause and insert new Clauses 29A- 29F:

29A Not used:

29B Not used.

29C Insert a new Clause 29C:

**“Quality Assurance”**

“29C.1 The *Contractor* shall provide a quality management system in accordance Scope DID-004 – Deliverable Quality Plan.

29D Insert new Clause 29D:

**“Building Information Modelling (BIM) Requirements**

29D.1. The *Contractor* warrants and undertakes that it shall comply with the BIM requirements set out in the Scope.”

29E Insert a new Clause 29E:

**“Contractor's Personnel at Government Establishments**

**General**

29E.1 The following general provisions apply:

29E.1.1 The Officer in Charge shall provide such available administrative and technical facilities for the Contractor's Representatives employed at Government Establishments for the purpose of the contract as may be necessary for the effective and economical discharge of work under the contract. These facilities will be provided free of charge unless otherwise stated in the contract. The status to be accorded to the Contractor's Representatives for messing purposes will be at the discretion of the Officer in Charge.

29E.1.2 Any land or premises (including temporary buildings) made available to the *Contractor* by the *Client* in connection with the contract shall be made available to the *Contractor* free of charge, unless otherwise stated in the contract, and shall be used by the *Contractor* solely for the purposes of performing the contract. The *Contractor* shall have the use of such land or premises as licensee and shall vacate the same upon completion of the contract. Any utilities required by the *Contractor* shall be subject to the charges set out in the contract.

29E1.3 The *Contractor* shall have no claim against the *Client* for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to him prior to entering into the contract.

**Liability in respect of damage to Government Property**

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- 29E.2.1 Without prejudice to the provisions of Clause 70B, the *Contractor* shall, except as otherwise provided for in the contract, make good or, at the option of the *Client*, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the *Contractor*, or by any of his Representatives, arising from his or their presence on a Government Establishment in connection with the contract, provided that this Clause 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 his or their reasonable control.
- 29E.2.2 The total liability of the *Contractor* under Clause 29E.2.1 herein shall be subject to any limitation specified in the contract.

### **Contractor's Property**

- 29E.3 All property of the *Contractor* and his Representatives shall be at the risk of the *Contractor* whilst it is on any Government Establishment, and the *Client* shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- 29E.3.1 where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or contractor then the *Client* shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
- 29E.3.2 where any property of the *Contractor* has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the *Client* shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

### **Contractor's Representatives**

- 29E.4.1 The *Contractor* shall submit in writing to the *Client* for approval, initially and as necessary from time to time, a list of those of his Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the contract, giving such particulars as the *Client* may require, including full details of birthplace and parentage of any such Representative who:
- 29E.4.1.1 was not born in the United Kingdom; or
- 29E.4.1.2 if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.
- 29E.4.2 The *Client* shall issue passes for those Representatives who are approved by it in accordance with Clause 29E.4.1 herein for admission to a Government Establishment and a Representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the *Client* and shall be surrendered on demand or on completion of the work.
- 29E.4.3 Notwithstanding the provisions of Clauses 29E.4.1 and 29E.4.2 hereof if, in the opinion of the *Client*, any Representative of the *Contractor* shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the *Contractor*, the *Contractor* shall remove



such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

- 29E.4.4 The decision of the *Client* upon any matter arising under Clauses 29E.4.1 to 29E.4.3 inclusive shall be final and conclusive.

#### **Observance of Regulations**

- 29E.5 The following provisions apply:

29E.5.1 The *Contractor* shall ensure that his Representatives have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.

29E.5.2 Where the *Contractor* requires information on the Government's Baseline Personnel Security Standard (the Standard) or security clearance for his Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, he shall apply in the first instance to the Project Manager/Equipment Support Manager.

29E.5.3 On request, the *Contractor* shall be able to demonstrate to the *Client* that the Contractor's processes to assure compliance with the standard have been carried out satisfactorily. Where that assurance is not already in place, the *Contractor* shall permit the *Client* to inspect the processes being applied by the *Contractor* to comply with the Standard.

29E.5.4 The *Contractor* shall comply and shall ensure that his Representatives comply with the rules, regulations and requirements that are in force whilst at that Establishment which shall be provided by the *Client* on request.

29E.5.5 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.

29E.6 Not used.

29E.7 Not used.

#### **Injuries, Disease and Dangerous Occurrences**

29E.8 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 *Client*).

29E.9 Number not used.

29E.10 Number not used.

**Health and Safety Hazard Control**

29E.11 Where the *Contractor* enters a Government Establishment for the purpose of performing work under the contract:

29E.11.1 The *Contractor* shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the contract of any:

29E.11.1.1 health and safety hazards associated with the work to be performed by him or any of his Representatives;

29E.11.1.2 foreseeable risks to the health and safety of all persons associated with such hazards; and

29E.11.1.3 precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the *Client*, in order to control such risks.

29E.11.2 The *Client* shall notify the *Contractor* of any:

29E.11.2.1 health and safety hazards which may be encountered by the *Contractor* or any of his Representatives on the Government Establishment;

29E.11.2.2 foreseeable risks to the health and safety of the *Contractor* or any of his Representatives, associated with such hazards; and

29E.11.2.3 precautions to be taken by the *Client* as well as any precautions which, in its opinion, ought to be taken by the *Contractor*, in order to control such risks.

29E.11.3 The *Contractor* shall notify his Representatives of and, where appropriate, provide adequate instruction in relation to the:

29E.11.3.1 hazards, risks and precautions notified by him to the *Client* under sub-clause 29E.8.1

29E.11.3.2 hazards, risks and precautions notified by the *Client* to the *Contractor* under sub-clause 29E.11.2; and

29E.11.3.3 precautions which, in his opinion, ought to be taken by his Representatives in order to control those risks.

29E.11.4 The *Contractor* shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the contract with:

29E.11.4.1 copies of those sections of his own and, where appropriate, his Representatives' safety policies which are relevant to the risks notified under sub-clause 29E.11.1;

29E.11.4.2 copies of any related risk assessments; and

29E.11.4.3 copies of any notifications and instructions issued by him to his Representatives under sub-clause 29E.11.3

- 29E.11.5 The *Client* shall provide the *Contractor* with copies of:
- 29E.11.5.1 those sections of its own safety policies which are relevant to the risks notified under sub-clause 29E.11.2;
- 29E.11.5.2 any related risk assessments; and
- 29E.11.5.3 any notifications and instructions issued by it to its employees similar to those called for from the *Contractor* under sub-clause 29E.11.3.”
- 29F Add Clauses 29F and 29G:

#### **“Provision of a Shared Data Environment Service**

##### **Scope**

- 29F.1 The *Contractor* shall provide a Shared Data Environment (SDE) Service for the Project described at Schedule 10, in accordance with the requirements of this Clause and as specified in the relevant part of the contract Schedule of Requirements (hereinafter called 'the SDE SOR'), which shall, amongst other things:
- 29F.1.1 enable Access exclusively for the organisations and companies who are from time to time parties to the Electronic Information Sharing Agreement (EISA);
- 29F.1.2 provide the level of Fidelity and Integrity as set out in this Clause; and
- 29F.1.3. provide service support facilities to all Users including manuals, training, help desk and maintenance services.

##### **Duration**

- 29F.2 The *Contractor* shall provide the SDE Service in accordance with Clause 29F.1 of this Clause for the period specified in the Scope.

#### **Participation in the Electronic Information Sharing Agreement (EISA)**

- 29F.3 The *Contractor* shall, when so requested by the *Client*, enter into an Agreement with one or more Users, including the *Client*, who may from time to time participate in the SDE. The Agreement, to be known as the EISA, shall be in the form of DEFFORM 687C (Edn 06/01).

##### **Security and Confidentiality**

- 29F.4 The *Contractor* shall ensure that:
- 29F.4.1 the SDE System operates and is operated in accordance with the security and confidentiality requirements applicable to the contract and the EISA;
- 29F.4.2 the SDE System shall be capable of handling Information up to the classification defined in the SDE SOR; and

29F.4.3 the security accreditation for the SDE System is obtained and maintained in accordance with the SDE SOR.

### Information Management

29F.5.1 The *Contractor* shall make provision for different categories of Information as specified in the EISA to be managed by the SDE System in accordance with the SDE SOR.

29F.5.2 The *Contractor* shall use all reasonable endeavours to ensure that the Information processing systems deployed to support the SDE System:

29F.5.2.1 maintain Loaded Information without corruption to its content as it is processed; and

29F.5.2.2 properly process the Information.

### Intellectual Property

29F.7.1 Subject to the rights of third parties and the pre-existing rights of the *Client*, and to the conditions of the contract, all intellectual property rights in the SDE System provided under the contract shall vest in the *Contractor*.

29F.7.2 If the *Contractor* intends to place a *Sub-contract* for the provision of any part of the SDE Service, he must either secure rights for the *Client* in respect of that part, equivalent to those provided in Clause 29F.7.3, or require the subcontractors to enter into a direct agreement with the *Client* in accordance with the relevant Design Rights and Patents (Subcontractor's) Agreement included in the contract.

29F.7.3 The *Client*, together with the other Users, shall have the right to utilise the SDE System for Project Implementation in accordance with the SDE SOR and the EISA, for the duration of the contract.

29F.7.4 The price (and pricing arrangements) for the grant to the *Client* of the right contained in Clause 29F.7.3, shall be within the Contract Price or as otherwise provided in the contract.

29F.7.5 No rights to use Information which may be Accessed via the SDE are granted by this Clause. This Clause shall not prejudice any pre-existing or separately acquired rights of the *Contractor*, the *Client* or any other User.

29F.7.6 The *Contractor* shall be entitled to include a user notice on the SDE which indicates his ownership of copyright or other intellectual property rights in the SDE System provided that this is written in terms consistent with the *Client's* rights under this Clause.

### Operation of the SDE System

29F.8.1 The SDE System shall be located at the addresses listed at Schedule 2.

29F.8.2 The *Contractor* shall appoint a Service Administrator. This appointment must first be agreed with the *Client*, who may, at its discretion, consult some or all of the Users. If, during the course of the contract, the *Contractor* wishes to

replace the Service Administrator with another individual, he shall first seek the approval of the *Client*.

29F.8.3 The Service Administrator shall be the principal point of contact for all Users for any matter relating to the operation of the SDE System and shall oversee the operation of the SDE Service to ensure that it meets the requirements of the contract.

29F.8.4 The *Client* shall have the right to require the *Contractor* to replace the Service Administrator, provided that the *Client* demonstrates that the Service Administrator is jeopardising the effective operation of the SDE Service.

29F.8.5 The *Contractor* shall provide:

29F.8.5.1 a User Protocol document;

29F.8.5.2 full instructions for use of the SDE System;

29F.8.5.3 a secure User authentication method (e.g. log-on);

29F.8.5.4 the means for Users to establish Access permissions for their Information;

29F.8.5.5 simultaneous Access to the specified number of work stations;

29F.8.5.6 a simultaneous Service to the specified maximum number of work stations with a corresponding reduction in performance, but without suffering a complete failure in the Service; and

29F.8.5.7 in addition to sub-Clauses 29F.8.5.1 - 29F.8.5.6, the other facilities, functionality and services, if any, specified in the SDE SOR.

29F.8.6 Except for the purposes of operating the SDE System in accordance with Clause 29F.9.1 or pursuant to Clause 29F.11.1, neither the *Client* nor the *Contractor* shall permit Access to the SDE System or any Loaded Information by any third party other than a User. In addition, the *Contractor* shall ensure that Loaded Information is Accessed solely by Users who have secured such rights under the EISA and to the extent permitted by that Agreement.

29F.8.7 The *Contractor* may appoint a third party to undertake his duties in respect of the provision of the SDE Service. This appointment shall not relieve the *Contractor* of his obligations under the contract. Prior to the appointment of any third party under this Clause 29F.8.7, the third party must become a signatory to the EISA.

### **Management of the SDE System**

29F.9.1 In maintaining records relating to or connected with the SDE the *Contractor* shall pay due regard to the provisions of BS 7799 Code of Practice for Information Security Management and BS10008 Evidential Weight and Legal Admissibility of Electronic Information.

29F.9.2 The *Contractor* shall, in accordance with the SDE SOR and with due regard to his obligations under the EISA:

29F.9.2.1 provide Users with controlled Access;

29F.9.2.2 ensure, as far as is reasonably practical, that all Loaded Information, including associated marks and legends, is Accessible only by Users authorised to have Access and is not altered, lost or destroyed;

29F.9.2.3 monitor the Access and usage of the SDE to detect any instances of misuse, malicious attack, unauthorised Access and any other threat to its Integrity;

29F.9.2.4 implement and maintain a virus control policy and make details thereof available to all Users, in accordance with the SDE SOR and the EISA;

29F.9.2.5 operate a Data configuration management control system in accordance with the SDE SOR and the EISA;

29F.9.2.6 obtain the *Client's* agreement to Information naming and reference schemes before implementation;

29F.9.2.7 implement and maintain an agreed Data back-up policy; and

29F.9.2.8 ensure that, if any part of the SDE Service or SDE System is changed, the Users' ability to Access Information is not adversely affected.

### **Storage and Archiving**

29F.9.3 For the duration of the contract the *Contractor* shall arrange that:

29F.9.3.1 all Data is maintained in the format required by the SDE SOR;

29F.9.3.2 all Data when stored in the SDE System is maintained from the date of being loaded into the SDE for the period specified in the SDE SOR, after which time (following reasonable notice to Users) it shall be Expunged unless:

- i. a specific request for its retention in the SDE is made by any current User, or
- ii. it is withdrawn by a User in accordance with the EISA, or
- iii. it is Archived.

29F.9.3.3 Data on the SDE System can be Archived when it is no longer required by any of the current Users; and

29F.9.3.4 when requested by any current User, Archived Data is reinstated on the SDE.

29F.9.4 At the end of the contract the *Contractor* shall arrange that:

29F.9.4.1 all Information in the SDE is Archived and retained in a useable format for a period of not less than 2 years, or such other period as may be specified in the SDE SOR; and

29F.9.4.2 during the period to which sub-clause 29F.9.4.1 applies, and within 10 business days of being requested, or such other period as may be specified in the SDE SOR, retained Data is made available to the *Client* on a medium to be agreed between the *Client* and the *Contractor*. A fair and reasonable price shall be agreed for satisfying each request.

29F9.5 At the expiry or termination of his obligations under the contract the *Contractor* shall, on the direction of the *Client*, either Expunge, destroy or surrender to the *Client* all Data stored in the SDE System and any Archive, always provided that the Log shall not be Expunged or destroyed.

### **The Log**

29F9.6 The *Contractor* shall establish a Log and ensure that all instances of Access to the SDE (except where the User Protocol provides otherwise) are automatically Logged, recording as a minimum:

29F9.6.1 details of any Information Accessed;

29F9.6.2 identity of the User; and

29F9.6.3 date and time of the Access.

29F9.7 The *Contractor* shall also record the details of any unauthorised or denied Access attempts, including the identity of the User or, insofar as it can be ascertained, any other third party making the attempt, the information system into which the attempt was made and the date and time of the attempt.

29F9.8 The *Contractor* shall maintain the Log during the term of the contract and thereafter for a period of no less than 2 years, or other such period as may be specified in the contract, and shall make available relevant certified extracts to any User on request, in accordance with the EISA. The *Contractor* shall fulfill any request for visibility of an extract of the Log under this Clause 29F9.8 within 48 hours, or such other period as may be specified in the contract.

### **Disaster Recovery**

29F9.9 The Disaster Recovery Plan shall be Accessible to all Users via the SDE.

29F9.10 In the event of a Disaster occurring, the *Contractor* shall carry out the procedures detailed in the Disaster Recovery Plan.

### **Availability of Service**

29F9.11 Overall availability of the SDE Service shall be within the parameters defined in the SDE SOR.

29F9.12 The *Contractor* shall carry out scheduled maintenance requiring system down time or degradation of the Service in accordance with the SDE SOR, at a time agreed with the *Client*. At least 48 hours before the commencement

of any scheduled maintenance requiring system down time or degradation, or other such period as may be specified in the contract all Users shall be notified by the *Contractor* of the time of commencement of such down time or degradation and its expected duration. Periods of scheduled maintenance shall not exceed the timescales specified in the SDE SOR. Any inability to Access the SDE of which the *Contractor* has knowledge or is made aware shall be recorded in the Log, so that a complete record of down time is kept.

29F9.13 The *Contractor* shall give warning without delay to all Users of periods where the Service is required to be interrupted for unscheduled maintenance. The periods of inaccessibility shall not exceed those specified in the SDE SOR.

29F9.14 Following any interruption, the *Contractor* shall ensure that the SDE Service is restored in a timely manner.

### **Changes to the SDE System**

29F.10 The *Contractor* shall obtain the *Client's* prior written approval for any material change of location or architecture of any element of the SDE System. The *Client* shall inform the *Contractor* of its decision with 20 business days of receipt of any such request for approval, or any other such period as may be specified in the contract, and shall not unreasonably refuse or delay permission.

### **Audit**

29F.11.1 If a User can demonstrate good cause, the *Client* may, after giving reasonable notice, audit the Integrity, Fidelity, infrastructure and organisation of the SDE System having due regard to the requirements of the SDE SOR. The audit shall be performed by the *Client*, or by a third party nominated by the *Client* and acceptable to the *Contractor*, who will be placed under an obligation of confidentiality prior to any Access to the SDE. The *Client* shall, subject to security considerations, provide a copy of the audit report to the *Contractor*.

29F.11.2 The *Client* may pass the results of an audit to any User having a reasonable need to be aware of them.

### **Transfer of the Service**

29F.12 If, following consultation, the *Contractor* fails to take steps to rectify any significant deficiency in the performance of the SDE Service which is jeopardising the effectiveness of the SDE Service then, without prejudice to any other remedies, the *Client* may instruct the *Contractor* to appoint another party to undertake the SDE Service. That other party shall become a party to the EISA prior to undertaking performance of the SDE Service.

[Schedule 1: Project description  
Schedule 2: Location of the SDE System]<sup>6</sup>

### **Shared Data Environment System Transfer Arrangements**

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<sup>6</sup> To be filled in with the relevant information



29F.13.1 In the event that the *Client* wishes to appoint another contractor to provide a SDE Service for the Project on completion or termination of the contract, the *Client* shall have the right to require the *Contractor* to grant the following licences under his intellectual property rights:

29F.13.1.1 a licence for the *Client*, with the right to sub-license, to utilise the SDE System for continued Project Implementation; and

29F.13.1.2 a licence for the *Client*, with the right to sub-license, to allow another SDE Service provider to utilise, maintain and modify the SDE System for continued Project Implementation.

29F.13.2 The licence to be granted under Clause 29F.2 shall not require the *Contractor* to permit retention by the *Client* or any other User, or the transfer, of any computer hardware or network infrastructure owned by him or a third party, nor shall the licence extend to any standard commercial computer software owned by him or a third party.

29F.13.3 In the event that the *Contractor* can demonstrate that he has wholly or partly funded the development of any part of the SDE System to be licensed under Clause 29F.2, fair and reasonable financial terms for the licence shall be agreed with the *Client* reflecting the respective funding contributions; otherwise the licence shall be free of payment.

29F.13.4 The *Client* shall consult the *Contractor* before engaging another SDE Service provider under any licence secured under the provisions of Clause 29F.2, and shall pay due regard to any representations he may make concerning conflicts of interest.

## 29G **Supply of Hazard Data**

29G.1 The *Contractor* shall provide to the *Client*:

29G.1.1 for each hazardous material or substance supplied a "Safety Data Sheet" ("SDS") in accordance with the extant Classification, Labelling and Packaging (GB CLP) Regulation ("GB CLP"); or

29G.1.2 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 29G shall reduce or limit any statutory duty or legal obligation of the *Client* or the *Contractor* and/or the *Contractor's* obligations contained in the Scope.

29G.2 If the item of supply contains or is a substance falling within the scope of the extant Registration, Evaluation, Authorisation and Restriction of Chemicals Regulations ("UK REACH"):

29G.2.1 the *Contractor* shall provide to the *Client* an SDS for the substance in accordance with UK REACH. If the *Contractor* becomes aware of new information which may affect the risk management measures or new information on the hazard, the *Contractor* shall update the SDS and forward it to the *Client* and to the address listed in Clause 29G.8 (Supply of Hazard Data); and

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- 29G.2.2 the *Client*, 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 SDS supplied, shall report this information in writing to the *Contractor*.
- 29G.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, the *Contractor* shall provide to the *Client* a list of those hazardous materials or substances, and, for each hazardous material or substance listed, provide an SDS.
- 29G.4 The Contractor shall provide to the Client a completed DEFFORM 68.
- 29G.5 If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the GB CLP and UK REACH the *Contractor* shall comply with the hazard reporting requirements of Def Stan 07-085 (Design Requirements for Weapons and Associated Systems).
- 29G.6 If the Articles, materials or substances are or contain or embody a radioactive substance as defined in the extant Ionising Radiation Regulations, the *Contractor* shall additionally provide details of:
- 29G.6.1 activity; and
- 29G.6.2 the substance and form (including any isotope).
- 29G.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.
- 29G.8 Any SDS to be provided in accordance with this clause 29G, including any related information to be supplied in compliance with the *Contractor's* statutory duties under clauses 29G.1.1 and 29G.2., any information arising from the provisions of clauses 29G.5, 29G.6 and 29G.7 and the completed DEFFORM 68, shall be sent directly to the *Client* as soon as practicable, and no later than one (1) month prior to the delivery of the relevant Articles, materials or substances. In addition, so that the safety information can reach users without delay, the *Contractor* shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hard copy is available, to the addresses below:
- 29G.8.1 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
- 29G.8.2 Emails to be sent to:
- [DESTECH-QSEPEnv-HSISMulti@mod.gov.uk](mailto:DESTECH-QSEPEnv-HSISMulti@mod.gov.uk)

## OFFICIAL-SENSITIVE COMMERCIAL

29G.9 Failure by the *Contractor* to comply with the requirements of this clause 29G shall be grounds for rejecting the affected Articles. Any withholding of information concerning hazardous Articles, materials or substances shall be regarded as a breach of this Contract for which the *Client* reserves the right to require the *Contractor* to rectify the breach immediately at no additional cost to the *Client* or to terminate the Contract without compensation to the *Contractor*.

29G.10 Where delivery is made to the Defence Fulfilment Centre (“DFC”) and/or other Team Leidos location/building, the *Contractor* must comply with the Logistic Commodities and Services Transformation (“LCST”) Supplier Manual.

### **3 Time**

31.2 At the end of the 5<sup>th</sup> (fifth) bullet point add the following points:

- an action log of the occurrence and response to any known or potential compensation events
- financial forecasts identifying the impact on the Prices of any assessed and implemented compensation events and the forecasted impact on the Prices of any known but as yet unassessed and unimplemented compensation events, including any requested breakdowns of such costs
- list of any quality issues including rework, defects and snagging lists
- details of customer satisfaction levels linked to the Scope
- plans for stakeholder management, including correspondence with planning and other approval authorities
- current, previous and projected progress against the initial programme/milestones
- any risks or issues (including, without limitation any environmental, sustainability and Defence Related Environmental Assessment Model (DREAM) issues) encountered in or in carrying out the works
- health and safety updates including without limitation accident frequency rates, ‘near miss’ data, percentages of incidents reported to the *Client* within required timescales under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR and details of any reports which the *Contractor* is required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local *Client*).

31.5 The *Contractor* provides information which shows how each activity in the Scope relates to the operations on each programme which he submits for acceptance.

34.1 At the end of the Clause insert:

“During any period in which any work is so stopped or not started, the *Contractor* keeps secure and protects the Site and the works and all Equipment, Plant and Materials against any deterioration, loss, damage or theft.”

**4 Quality Management**

41.8 Add new Clause 41.8:

“If the *Contractor* has failed to carry out a test or inspection as required by the Scope either before or after Completion, the Project Manager assesses the cost of having the test or inspection carried out by others and the *Contractor* pays the amount assessed. Where the works or a material part thereof fails to pass the test or inspection so that such failure deprives the *Client* materially of the benefit thereof the Project Manager is entitled to reject the works or such part.”

44.2 Delete and replace with:

“44.2 The *Contractor* corrects a notified Defect in accordance with the response time categories below, or as agreed with the Project Manager, and before the end of the defect correction period. The defect correction period begins when the Defect is notified.

44.2.1 emergency. As soon as is reasonably practicable.

44.2.2 urgent. Functionality to be restored within five (5) Business Days and a permanent repair within twenty (20) Business Days.

44.2.3 routine. To be rectified within twenty (20) Business Days.”

46.1 Delete this Clause and replace with:

“If the *Contractor* is given access in order to correct a notified Defect but he has not corrected it within its *defect correction period*, the *Client* shall be entitled to employ other people to correct the Defect and all costs consequent thereon or incidental thereto shall be determined by the Project Manager and shall be deducted from any monies due to the *Contractor*.”

**5 Payment – Delete the entire section 5 from the standard NEC4 form and replace it with (Option C Main Option Clause still applies):**

**“50 Assessing the amount due**

50.1 The Project Manager assesses the amount due at each assessment date. The first assessment date is decided by the Project Manager to suit the procedures of the Parties and is not later than the assessment interval after the starting date. Later assessment dates occur:

- at the end of each assessment interval until four weeks after the Supervisor issues the Defects Certificate; and
- at Completion of the whole of the works.

- 50.2 The amount due is:
- the Price for Work Done to Date;
  - plus other amounts to be paid to the *Contractor*;
  - less amounts to be paid by or retained from the *Contractor*.
- Any tax which the law requires the *Client* to pay to the *Contractor* is included in the amount due.
- 50.3 If no programme (and/or any subsequent monthly programmes that have not been provided on time (as the case may be)) is identified in the contract Data and/or a subsequent monthly programme has not been provided on time, then without prejudice to any other remedy the *Client* may have, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the Project Manager for acceptance showing the information which this contract requires.
- 50.4 In assessing the amount due, the Project Manager considers any application for payment the *Contractor* has submitted on or before the assessment date. The Project Manager gives the *Contractor* details of how the amount due has been assessed. The *Contractor's* application is the notice of payment to the *Client* specifying the amount due at the payment date and stating the basis on which the amount was calculated. If no application is received on or before the assessment date (or no valid invoice has been received by the *Client* in accordance with Clause 59 the amount due (and therefore the notified sum) shall be nil."
- 50.5 The Project Manager corrects any wrongly assessed amount due in a later payment certificate.
- 50.6 Number not used.
- 50.8 Number not used.
- Add new Clause 50.10 - 50.15:
- 50.10 The Project Manager certifies a payment within one week of each assessment date. The Project Manager's certificate is the notice of payment to the *Contractor* specifying the amount due at the payment due date
- 50.11 The date on which payment becomes due is ten (10) Business Days after the assessment date. The final date for payment is the Relevant Day.
- 50.12 In respect of each payment instalment the *Client* shall pay to the *Contractor* by the Relevant Day (subject to any pay less notice issued in accordance with Clause 50.13) the amount certified by the Project Manager under Clause 50.10 (notified sum), or where an amount has not been so certified by the Project Manager the sum stated in the *Contractor's* application for payment under Clause 50.4 (notified sum).

- 50.13 If either Party intends to pay less than the notified sum, he notifies the other Party not later than fifteen (15) Business Days before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract.
- 50.14 In relation to giving notices under this Clause 50 it is immaterial that the amount then considered to be due may be zero.
- 50.15 A pay less notice given by the *Client* under this Clause 50 may be given on its behalf by the Project Manager or any other person who the *Client* notifies the *Contractor* as being authorised to do so.

## 51 Payment

- 51.1 Number not used.
- 51.2 Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the contract Data, within the period stated. If a certified payment is late, or if a payment is late because the Project Manager does not issue a certificate which he should issue, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
- 51.3 If an amount due is corrected in a later certificate either
- by the Project Manager in relation to a mistake or a compensation event or
  - following a decision of the Adjudicator or the tribunal,
- interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.
- 51.4 Interest is calculated on a daily basis at the interest rate and is compounded annually.

## 52 Defined Cost

- 52.1 All the Contractor's costs which are not included in the Defined Cost is treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered."

[53 Add new Clause 53:

## "Tax Compliance

## Warranty

- 53.1 The *Contractor* represents and warrants that at the date this contract came into effect, it has notified the *Client* in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

**Duty of the *Contractor* to notify OOTNC**

- 53.2 If, at any point during the performance of this contract, an OOTNC occurs, the *Contractor* shall:
- 53.2.1 notify the *Client* in writing of such fact within 20 Business Days of its occurrence; and
- 53.2.2 promptly provide to the *Client*:
- 53.2.2.1 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
- 53.2.2.2 such other information in relation to the OOTNC as the *Client* may reasonably require.
- 53.2.3 For the avoidance of doubt, the obligation at Clause 53.2 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 *Client* can understand the nature and seriousness of the OOTNC.

**Default**

- 53.3 The *Client* shall be entitled to terminate the contract in the event that the:
- 53.3.1 warranty given by the *Contractor* pursuant to Clause 53.1 is materially untrue; or
- 53.3.2 *Contractor* commits a material breach of its obligation to notify the *Client* of any OOTNC as required by Clause 53.2; or
- 53.3.3 *Contractor* fails to provide details of proposed mitigating factors which in the reasonable opinion of the *Client*, are acceptable.
- 53.4 In the event that the *Client* terminates the contract under Clause 53.3, the *Client* shall be entitled to recover from the *Contractor*:
- 53.4.1 the amount of any loss resulting from the termination; and
- 53.4.2 any other loss sustained in consequence of any breach of this Clause, where the contract has not been terminated.

**Duties of the *Client***

- 53.5 In exercising its rights or remedies under this Clause, the *Client* shall:
- 53.5.1 act in a reasonable and proportionate manner taking into account, among other things:

53.5.1.1 the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and

53.5.1.2 any remedial action taken by the *Contractor* to prevent reoccurrence of the OOTNC.

53.5.2 Without prejudice to Clause 53.4, seriously consider, where appropriate, action other than termination of the contract to deal with the failure by the *Contractor* to comply with this Clause.]<sup>7</sup>

### **The Contractor's share**

Insert a new Clause 54.5

"54.5 Payments from the Client to the *Contractor* under Clause X22 of this contract and for any Article of equipment specified in section 8.6 and in the SRD at Annex 2 of the Scope are excluded from the provisions of this clause 54.

55.1 Number not used.

56 Insert a new Clause 56:

### **"Import and Export Licences**

#### **UK Import and Export Licences**

56.1 If, in the performance of the contract, the *Contractor* needs to import into the UK or export out of the UK anything not supplied by or on behalf of the *Client* and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the *Contractor*. The *Client* 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**

56.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the contract, the *Contractor* shall as soon as reasonably practicable consult with the *Client* on the licence requirements. Where the *Contractor* is the applicant for the licence or authorisation the *Contractor* shall:

56.2.1 ensure that when end use or end user restrictions, or both, apply to all or part of any *Contractor* Deliverable (which for the purposes of this Clause shall also include information, technical data and software), the *Contractor*, unless otherwise agreed with the *Client*, shall identify in the application:

56.2.1.1 the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and

56.2.1.2 the end use as: For the Purposes of HM Government; and

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<sup>7</sup> Clause to be inserted in contracts over £5 million only.



- 56.2.2 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".
- 56.3 If the *Contractor* or any *Subcontractor* in the performance of the contract needs to export materiel not previously supplied by or on behalf of the *Client* 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 subcontractor. For the purposes of this Clause materiel shall mean information, technical data and items, including Articles, components of Articles and software.
- 56.4 Where the contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the *Contractor* shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the 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 *Client's* representative.
- 56.5 During the term of the contract and for a period of up to 2 years from completion of the contract, the *Client* 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 *Client* 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 *Client* makes such a request it will consult with the *Contractor* before making a determination of whether the *Client* or the *Contractor* is best placed in all the circumstance to make the request. Where, subsequent to such consultation the *Client* notifies the *Contractor* that the *Contractor* is best placed to make such request:
- 56.5.1 the *Contractor* shall, or procure that the *Contractor's Subcontractor* shall, expeditiously consider whether or not there is any reason why they should object to making the request and, where they have 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
- 56.5.2 the *Client* shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- 56.6 Where the *Client* 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 *Client* to make the application for the requested variation.

- 56.7 Where the *Client* invokes Clause 56.5 or 56.6 the *Client* will pay the *Contractor* a fair and reasonable charge for this service based on the cost of providing it.
- 56.8 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. Where it is not possible to include equivalent terms to those set out in this Clause, the *Contractor* shall report that fact and the circumstances to the *Client*.

**Obtaining a Licence or authorisation from a foreign government – *Client* obligations**

- 56.9 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the *Client* 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.
- 56.10 The *Client* 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**

- 56.11 The *Contractor* shall use reasonable endeavours to identify whether any *Contractor* Deliverable is subject to:
- 56.11.1 a non-UK export licence, authorisation or exemption; or
- 56.11.2 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 Clause 22A.
- 56.12 If at any time during the term of the contract the *Contractor* becomes aware that all or any part of the *Contractor* Deliverables are subject to Clause 56.11.1 or 56.11.2, they shall notify the *Client* of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than 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.
- 56.13 If the information to be provided under Clause 56.12 has been provided previously to the *Client* 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 56.12.
- 56.14 During the term of the contract, the *Contractor* shall notify the *Client* as soon as reasonably practicable of any changes in the information notified previously under Clause 56.12 or 56.13 of which they become or are aware

that would affect the *Client'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 *Client*.

- 56.15 For a period of up to 2 years from completion of the contract and in response to a specific request by the *Client*, the *Contractor* shall notify the *Client* as soon as reasonably practicable of any changes in the information notified previously under Clause 56.12 or 56.13 of which they become aware that would affect the *Client'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 *Client*.
- 56.16 Where following receipt of materiel from a *Subcontractor* or any of their other suppliers, restrictions are notified to the *Contractor* by that *Subcontractor*, supplier or other third party or are identified by the *Contractor*, the *Contractor* shall immediately inform the *Client* by issuing an updated DEFFORM 528. Within 5 Business Days of such notification, the *Contractor* shall propose to the *Client* 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 *Client* shall notify the contractor within 20 Business Days of receipt of a proposal whether it is acceptable and where appropriate the contract shall be modified in accordance with its terms to implement the proposal.
- 56.17 If the restrictions prevent the *Contractor* from performing their obligations under the contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the *Client* may at its absolute discretion elect to amend the contract in accordance with Clause 13.10 or as otherwise may be provided by the contract or to terminate the contract. Except as set out in Clause 56.18, 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 *Client*. 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 dispute resolution in accordance with the provisions in the contract.
- 56.18 In the event that the restrictions notified to the *Client* pursuant to Clause 56.12 were known or ought reasonably have been known by the *Contractor* (but were not disclosed) at contract award or if restrictions notified to the *Client* pursuant to Clause 56.14 or 56.16 were known or ought reasonably to have been known by the *Contractor* at the date of submission of the most recent DEFFORM 528 submitted to the *Client* in accordance with Clause 56.12, termination under Clause 56.17 will be in accordance with Clause 90B and the provisions of Clause 56.22 will not apply.

***Client* obligation to provide information**

- 56.19 The *Client* shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the *Contractor* as GFA. Where the *Client* is to provide materiel necessary to enable the *Contractor* to perform the contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation,

exemption or other related transfer or export control as described in the provisions of Clause 56.11 above, the *Client* 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 material to the *Contractor*.

56.20 In the event that the *Client* becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such material is identified then the *Client* shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the *Client* 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.

56.21 Where:

56.21.1 restrictions are advised by the *Client* to the *Contractor* in a DEFFORM 528 provided pursuant to Clause 56.19 or 56.20 or both; or

56.21.2 any of the information provided by the *Client* in any DEFFORM 528 proves to be incorrect or inaccurate,

the *Client* and the *Contractor* shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the *Contractor* to perform their obligations under the contract, the matter shall be handled under the terms of Clause 13.10 or as may otherwise be provided by the contract as appropriate and if no alternative solution satisfies the essential terms of the contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the *Client* may terminate the contract. Termination under these circumstances will be under the terms of Clause 90B as appropriate and as referenced in the contract.

#### **Interim Position**

56.22 Pending agreement of any amendment of the contract as set out in Clause 56.17 or 56.21, provided the *Contractor* takes such steps as are reasonable to mitigate the impact the *Contractor* shall be relieved from their obligations to perform those elements of the contract directly affected by the restrictions or provision of incorrect or incomplete information.”

57 Insert new Clause 57:

#### **“Payment & Interest**

57.1 All valid, properly prepared invoices submitted to the *Client* in accordance with this Clause will be paid by the *Client* on or before the Relevant Day.

## OFFICIAL-SENSITIVE COMMERCIAL

- 57.2 Where and to the extent that the debt would otherwise be a 'qualifying debt' under the Late Payment of Commercial Debts (Interest) Act 1998
- 57.2.1 the interest provided for by this Clause is a contractual remedy and is not a statutory interest. Therefore, to the extent permissible by law, the provisions of Late Payment of Commercial Debts (Interest) Act 1998 relating to statutory interest will not apply to this contract;
- 57.2.2 from the day after the Relevant Day and thereafter until payment is made, simple interest at a rate calculated in accordance with sub-clause may be claimed by the *Contractor* on the value of all valid claims for payment (or unpaid parts thereof);
- 57.2.3 without prejudice to sub-clause 57.2.1 of this Clause 57, the rate of interest referred to in sub-clause 57.2.2 of this Clause 57 will be the prevailing rate of statutory interest (as defined in The Late Payment of Commercial Debts (Interest) Act 1998) on the Relevant Day;
- 57.2.4 no interest will be payable for any period of delay attributable to the conduct of the *Contractor*;
- 57.2.5 all claims for interest made pursuant to this Clause 57 will be notified in writing to the Commercial Officer; and
- 57.2.6 any interest pursuant to this Clause 57 will not form a part of the Prices and, as a remedy for late payment, will not be subject to VAT.
- 57.3 If the *Client* corrects the amount due in a later payment approval, then the *Client* will pay interest on the corrected amount. Interest will be calculated from the date when the correct amount was certified until the date when the corrected amount is included in a later payment approval.
- 58 Insert a new Clause 58:

### **“The use of the electronic business delivery form**

- 58.1 Form Usage:
- 58.1.1 The *Contractor* must use the electronic business delivery form for all deliveries of Articles and performance of Services.
- 58.1.2 The electronic business delivery form, DEFFORM 129J (Part 6, Schedule 3 of this contract), must accompany the package or consignment to which it applies. The *Contractor* must either:
- 58.1.2.1 attach the form as a label, directly to the package surface; or
- 58.1.2.2 forward the form in a document envelope as provided in Clauses 58.2.1.1 and 58.2.2.1 of this Clause.
- 58.2 Form Structure
- 58.2.1 For the provision of Articles
- 58.2.1.1 Where delivery is for a physical Article, the following criteria apply:

## OFFICIAL-SENSITIVE COMMERCIAL

58.2.1.1.2 The nominal label size is A6 (102 mm x 152 mm) but A5 (148 mm x 210 mm) is acceptable. If required by package size, the *Contractor* may use other label sizes, but only if no degradation to the text, bar code legibility and quality occurs, see Clause 58.6.

58.2.1.2 The *Contractor* must use the bar coded Unique Identifier as defined in Clause 59A, unless specified otherwise in the contract.

58.2.1.3 The *Contractor* must attach two labels to each package or consignment delivered. One label must be detachable for use in processing the information through the appropriate MOD receipting system.

58.2.2 For the provision of Services

58.2.2.1 Where performance is for a Service, the following criteria apply:

58.2.2.1.1 Standard size is A4 (210 mm x 297 mm).

58.2.2.1.2 The *Contractor* must use the bar coded Unique Identifier as defined in Clause 59A unless specified otherwise in the contract.

58.2.2.1.3 The *Contractor* must provide one form either on completion of the Service or on completion of each agreed stage of the Service.

58.3 Bar Code Symbolology and Print Quality

58.3.1 The bar code symbolology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbolologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.

58.3.2 The barcode print quality shall be as defined in ISO/IEC 16388 (Information technology – Automatic identification and data capture techniques – Code 39 bar code symbolology specification). The Overall Grade shall be at least Grade B at point of printing and not less than Grade C at final point of receipt.

58.4 Methods of Printing

58.4.1 For method of printing the DEFFORM 129J (Part6, Schedule 3 of this contract), electronic business delivery form, see DefStan 81-041 (Part 6). Laser printing is preferred.

59 Insert new Clause 59:

#### **"Payment and Recovery of Sums Due**

59.1

Payment for *Contractor* Deliverables will be made by electronic transfer and prior to submitting any claims for payment under Clause 59.2 the *Contractor* will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool via the current supported CP&F gateway.

## OFFICIAL-SENSITIVE COMMERCIAL

- 59.2 Where the *Contractor* submits an invoice to the *Client* in accordance with Clause 59.1, the *Client* will consider and verify that invoice in a timely fashion.
- 59.3 The *Client* shall pay the *Contractor* any sums due under such an invoice no later than a period of 30 days from the date on which the *Client* has determined that the invoice is valid and undisputed.
- 59.4 Where the *Client* fails to comply with Clause 59.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 3 after a reasonable time has passed.
- 59.5 The approval for payment of a valid and undisputed claim for payment by the *Client* shall not be construed as acceptance by the *Client* of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this contract.
- 59.6 Without prejudice to any other right or remedy, the *Client* reserves the right to set off any amount owing at any time from the *Contractor* to the *Client* against any amount payable by the *Client* to the *Contractor* under the contract or under any other contract with the *Client*, or with any other Government Department.
- 59.7 The *Client* shall be under no obligation to pay the *Contractor* for any Article of equipment specified in section 8.6 and in the SRD at Annex 2 of the Scope until the Supervisor has certified that all of the Articles required have been provided and that they all comply with the requirements of the Scope.

59A Insert a new Clause 59A:

### **"Unique identifiers**

#### **59A.1 Use**

59A.1.1 For CP&F purchase orders, the contract or an order issued under a Framework Agreement will reference UOIs or URRIs, or both. The application of UOIs and URRIs is at the line item level. The *Contractor* must quote the applicable Unique Identifier in any communication concerning a line item.

59A.1.2 Number not used.

#### **59A.2 Confirmation of Receipt**

59A.2.1 Confirmation of receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of Clause 27B or any other term of the contract relating to acceptance by the *Client*.

59B Insert a new Clause 59B:

### **"Value Added Tax**

OFFICIAL-SENSITIVE COMMERCIAL

- 59B.1 The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of *Contractor Deliverables* by the *Contractor* to the *Client*.
- 59B.2 If the *Contractor* is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the *Contractor* is liable to pay the tax due to HM Revenue and Customs (HMRC), the *Client* shall pay to the *Contractor* in addition to the Contract Price (or any other sum due to the *Contractor*) a sum equal to the output VAT chargeable on the tax value of the supply of *Contractor Deliverables*, and all other payments under the contract according to the law at the relevant tax point.
- 59B.3 The *Contractor* is responsible for the determination of VAT liability. The *Contractor* shall consult its *Client* Relationship Manager or the HMRC Enquiries Desk (and not the Commercial Officer) in cases of doubt. The *Contractor* shall notify the *Client's* Commercial Officer of the *Client'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 *Client* may require the *Contractor* to obtain, and pass to the *Client*, 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 *Client* within three Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the *Contractor* challenges the ruling it shall supply to the *Client* a copy of any final decisions issued by HMRC on completion of the challenge within three Business Days of receiving the decision.
- 59B.4 Where supply of *Contractor Deliverables* comes within the scope of UK VAT, but the *Contractor* is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the *Client* shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the *Contractor Deliverables*. The *Contractor* shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
- 59B.5 Where *Contractor Deliverables* are deemed to be supplied to the *Client* 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 *Client* shall pay to the *Contractor* in addition to the Contract Price (and any other sum due to the *Contractor* under the contract) a sum equal to the tax the *Contractor* is liable to pay to the tax authorities of the country in question in relation to the *Contractor Deliverables* within thirty calendar days of a written request for payment of any such sum by the *Contractor*.
- 59B.6 In relation to the *Contractor Deliverables* supplied under the contract the *Client* shall not be required to pay any sum in respect of the *Contractor's* input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the *Contractor* having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the *Contractor* has complied with this requirement the matter shall be resolved under Clause 9 or some other form of dispute resolution as agreed between the Parties.

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59B.7 Should HMRC decide that the *Contractor* has incorrectly determined the VAT liability, in accordance with Clause 2 above, the *Client* 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 *Client* under this contract or any other contract. The *Contractor* shall supply the *Client* with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three Business Days of a written request from the *Client* for such correspondence.

59C Insert a new Clause 59C:

**"Project Bank Account**

59C.1 The Project Bank Account will be set up at contract Award, and the Parties shall sign the Trust Deed (Part 5 Schedule 7), with a one-off deposit of £1,000 (One Thousand pounds only) being placed by the *Contractor*.

59C.2 The Project Bank Account will be opened by the *Contractor* and held jointly with the *Client* in accordance with the terms set out in the Trust Deed and Bank Account Agreement.

59C.3 The Project Bank Account will remain in place until the end of this contract.

59C.4 For the purposes of the Construction Industry Scheme (CIS), the *Client* will be responsible for the action, discharge, completion and submission of all CIS responsibilities in relation to the *Contractor*. The *Contractor* will be responsible for the action, discharge, completion and submission of all CIS responsibilities for the Subcontractors.

59C.5 At the end of this contract, once all required payments have been made, the Project Bank Account will be closed and any balance transferred to the *Contractor*."

**6 Compensation events**

63.12 Number not used.

**7 Title**

70.1 Delete 70.1 and 70.2 and replace with "Number not used."

70.3 Insert new Clause 70.3:

**"Accounting For Property Of The *Client***

70.3.1 The *Contractor* shall:

70.3.1.2 maintain a Public Store Account (PSA), as defined in DEFSTAN 05-099, which shall include a complete list of all property of the *Client*, as defined in Clause 70.3.2, and record for that property all transactions or other accounting information specified at Annex A to this Clause;

- 70.3.1.3 supply to the *Client* quarterly reports on the current PSA holdings. At least one report in any twelve-month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-099. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the *Contractor* and receipt by the *Client* of these reports shall not prejudice any rights or obligations of the *Client* or the *Contractor* under the contract;
- 70.3.1.4 ensure that the PSA is available for inspection by the *Client* at any reasonable time;
- 70.3.1.5 on being given two months' notice or any other period as has been stated in the contract permit, and co-operate with, the *Client* to conduct audits of the PSA in a manner to be determined by the *Client*; where the *Client* has reasonable grounds to doubt the integrity of the PSA to the extent that the *Client* is not satisfied of the proper use of property of the *Client*, an audit may be conducted without notice;
- 70.3.1.5 retain the PSA for a period of three years after disposal of the last item of the property of the *Client*, or for any other period as may be specified in the contract;
- 70.3.1.6 if the *Client* agrees that a *Subcontractor* at whatever level of subcontracting shall have responsibility in the subcontractor's PSA for property of the *Client* issued in aid of the contract, the *Contractor* shall include in any *Sub-contract* with those subcontractors only the provisions corresponding to those set out in this Clause that apply to property of the *Client* issued in aid of the *Sub-contract*, in particular Clauses 70.3.1, 70.3. 2, 70.3.4 and 70.3.7; and
- 70.3.1.7 manage the Government Furnished Assets (GFA) component of the PSA in accordance with the provisions of DEFSTAN 05-099; and implement any new edition of or amendment to DEFSTAN 05-099 subject to Clause 13.10 within three months of the publication date of the new edition. These amendments shall not have retrospective effect.
- 70.3.2 For the purposes of this Clause 'property of the *Client*' means GFA and fixed assets, including property issued under Clause 70B and property of the *Client* issued to the *Contractor* under any other authorising document except for property vested in the *Client* under Clause 70A.1.
- 70.3.3 For the avoidance of doubt, it is a condition of this contract that this Clause shall apply to all property issued to the *Contractor* from the date of this contract, whether in aid of the contract, any other contract or other agreement with the *Client*. Property of the *Client* issued prior to the date of this contract may be subject to separate contractual arrangements.
- 70.3.4 The obligations of the *Contractor* arising under this Clause in respect of property of the *Client* issued in aid of the contract shall survive completion of the contract and shall not be completed until all such obligations are fulfilled including the provisions of sub-clause 70.3.1.5.
- 70.3.5 The obligations of the *Contractor* arising, under this Clause, in respect of property of the *Client* unconnected with the contract, shall survive completion of the contract and shall not be completed until all those obligations are

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fulfilled. Including the provisions of sub-clause 70.3.1.5 unless and until a subsequent contract containing Clause 70.3 is placed with the *Contractor*, at which time obligations, in respect of any remaining property of the *Client*, unconnected with the contract, shall be subsumed in the subsequent contract.

70.3.6. If, after completion of the contract, no subsequent contract is placed containing Clause 70.3 within the period detailed at sub-Clause 70.31.5, then the obligations of the *Contractor* arising under this Clause in respect of property of the *Client* unconnected with the contract shall cease on expiry of the period detailed at sub-clause 70.3.1.5.

70.3.7 The *Client* reserves the right to amend Annex A without further consultation where the amendments arise from the *Client's* proper and reasonable accounting requirements. For the purposes of this Clause, Annex A shall be regarded as a Scope and subject to the terms of Clause 13.10. If the *Client* exercises this right:

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

70.3.7.2 the *Contractor* shall inform the *Client* 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 Annex A."

70A Insert new Clause 70A:

### **"Vesting**

70A.1 Subject to the following provisions of this Clause:

70A.1.1 each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and

70A.1.2 all materiel which the *Contractor* acquires or allocates for incorporation in any of the Articles, shall vest in and become the absolute property of the *Client*, as from the time the construction of the Article begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the *Contractor* for the sole purpose of completing the Articles and delivering them when completed to the *Client*, and shall not be within the control or disposition of the *Contractor* other than for that purpose.

70A.2 Neither the *Contractor*, nor a *Subcontractor*, nor any other person shall have a lien on any Article or materiel which have vested in the *Client* under Clause 70A.1 of this Clause for any sum due to the *Contractor*, *Subcontractor* or other person. The *Contractor* shall take all reasonable steps necessary to ensure that the provisions of this Clause are brought to the notice of all subcontractors and other persons dealing with any such Articles or materiel.

70A.3 Any Article or materiel which is rejected by the *Client* shall immediately re-vest in the *Contractor*.

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- 70A.4 If the *Client* terminates the contract otherwise than under Clause 90A, any Article which has not been accepted in accordance with Clause 27B and any materiel which has not been incorporated in any Article which has been accepted in accordance with Clause 27B shall re-vest in the *Contractor*. Such re-vesting shall occur on the expiry of thirty days from the date on which that termination shall take effect, unless the *Client* has given the *Contractor* notice, prior to that expiry, that the *Client* elects to retain the property in the Article or materiel.
- 70A.5 Any payment made by the *Client* in respect of any Article or materiel which re-vest in the *Contractor* under Clauses 70A.3 or 70A.4 of this Clause shall be recoverable from the *Contractor*.
- 70A.6 The *Contractor* shall hand over to the *Client* any Article or materiel in which the *Client* has elected to retain the property under Clause 70A.4 of this Clause. If the *Contractor* fails to do so, the *Client* shall have the right to enter the *Contractor's* premises and remove the Article or materiel and recover the cost of doing so from the *Contractor*.
- 70A.7 The *Client* shall pay a fair and reasonable price in accordance with Clause 50 for any Article or materiel in which it has elected to retain the property under Clause 90A.8 of this Clause and which are handed over to it by the *Contractor* or otherwise come into his possession.
- 70A.8 Where any Article or materiel in the *Client's* possession or control has re-vested in the *Contractor* in accordance with Clauses 70A.3 or 70A.4 of this Clause, the *Contractor* shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the contract. If the Article or materiel is on the premises of the *Client* or the premises of any Government Department (including any agencies thereof), the *Contractor* shall remove them within fourteen calendar days of their re-vesting."
- 70B Insert a new Clause 70B<sup>8</sup>:

## **"Issued Property**

### **General**

- 70B.1.1 All Issued Property shall remain the property of the *Client*. It shall be used in the execution of the contract and for no other purpose, without the prior approval in writing of the *Client*.
- 70B.1.2 Neither the *Contractor*, nor any *Subcontractor*, nor any other person, shall have a lien on Issued Property, for any sum due to the *Contractor*, *Subcontractor* or other person, and the *Contractor* shall take all such steps as may be necessary to ensure that the title of the *Client*, and the exclusion of any such lien, are brought to the notice of all subcontractors and other persons dealing with any Issued Property.

### **Receipt**

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<sup>8</sup> Optional clause. To be decided at call off.

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70B.2.1 Subject to Clauses 70B.2.2 and 70B.2.5 below, within 14 days of receipt of Issued Property, or such other longer period as may be specified in the contract, the *Contractor* shall:

70B.2.1.1 check the Issued Property to verify that it corresponds with the Issued Property specified in the contract;

70B.2.1.2 conduct a reasonable visual inspection;

70B.2.1.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided; and

70B.2.1.4 notify the *Client* of any defects, deficiencies or discrepancies discovered.

70B.2.2 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 70B.2.1 above shall count from the date on which packages are opened.

70B.2.3 The *Client* shall within a reasonable time after receipt of any notice under Clause 70B.2.1 of this Clause replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the *Client* shall revise the Contract Price, delivery schedule or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

70B.2.4 In the event that the *Client* 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 70B.2.1, fair and reasonable revisions of the Contract Price, delivery schedule or both shall be made as may be appropriate provided that the *Contractor* has taken all reasonable measures to mitigate the consequences of any such delay.

70B.2.5 Clauses 70B.2.1 – 70B.2.4 do not apply in the following circumstances:

70B.2.5.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in the contract,

70B.2.5.2 where the *Contractor* can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in the contract.

### **Custody**

70B.3.1 Subject to Clause 70B.3.4 below and any limitation or exclusion of liability as may be specified in the contract, the *Contractor* shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Articles, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the *Client's* instructions or until the expiry of the period specified in Clause 70B.4.3.

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70B.3.2 The *Contractor* shall be responsible for such calibration and maintenance of the Issued Property as is specified in the contract.

70B.3.3 If requested, the *Client*, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the *Contractor* of the value of the Issued Property.

70B.3.4 The *Contractor* shall not be liable in respect of:

70B.3.4.1 defects or deficiencies notified to the *Client* in accordance with Clause 3 of this Clause or latent defects which the *Contractor* can show could not reasonably have been discovered by means of the activities described at Clause 70B.2.1 of this Clause,

70B.3.4.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of the contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the *Contractor*),

70B.3.4.3 Issued Property rendered unserviceable as a direct result of ordinary performance of the contract.

70B.3.4.4 any loss or damage to Issued Property arising from:

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

### **Accounting and Return of Issued Property**

70B.4.1 The *Contractor* shall:

70B.4.1.1 open and maintain a Public Store Account (PSA) in accordance with DEF STAN 05-099.

70B.4.1.2 ensure that all property of the *Client* recorded in the PSA, including but not limited to Issued Property, is available for inspection by the *Client* at any reasonable time.

70B.4.1.3 on being given two months notice or such other period as has been stated in the contract permit, and co-operate with, the *Client* to conduct audits of the property of the *Client* recorded in the PSA in a manner to be determined by the *Client*; where the *Client* has reasonable grounds to believe that the property of the *Client* has not been used in accordance with the terms of issue then these audits may be conducted without notice.

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70B.4.2 At contract completion the *Contractor* shall forward a list of Issued Property still held to the *Client's* Commercial Officer named in the contract. Return or disposal of such Issued Property will be as specified in the contract, or as instructed by the *Client* at contract completion. If no disposal instructions are specified in the contract the *Client* shall provide such instructions within two months of the Contractor's written request to do so.

70C Insert Clause 70C:

**“Scope Changes**

70C.1 For the purposes of the contract “the Scope” shall include any document or item which, individually or collectively, is referenced in the Schedule of Requirements.

70C.2 The Scope forms part of the contract.

70C.3 All Articles or Services to be supplied under the contract shall conform in all respects with the Scope.

70C.4 The *Contractor* shall use a configuration control system to control changes to the Scope. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the contract.

70C.5 The *Client*, or the Representative of the *Client* may, alter the Scope. Any alterations shall not alter the fit, form, function or characteristics of the Articles or Services to be supplied under the contract.

70C.6 The changes will be provided in writing and shall apply from the date specified by the *Client*. The *Client* shall provide an updated Scope. The Articles or Services shall be delivered in accordance with the altered Scope. These alterations shall not constitute a formal amendment of the contract and shall be implemented upon receipt, or at the date specified in the *Client's* notice.

70C.7 Any alterations that cause a change to:

70C.7.1 fit, form, function or characteristics of the Articles or Services;

70C.7.2 the cost;

70C.7.3 delivery dates;

70C.7.4 period required for the production or completion;

70C.7.5 other work caused by the alteration;

shall be subject to Clause 13.10. Each amendment under Clause 13.10 shall be classed as a formal change.

70C.8 In the event that either party considers that there may be any conflict within the Scope it shall immediately notify the other party.

70C.9 Any documentation provided by the *Client* outside of this condition shall not alter the Scope.”

70D Insert Clause 70D:

**“Loss of or damage to the Articles**

- 70D.1            Until delivery, the risk of loss or damage to the articles remains with the *Contractor*. Without prejudice to any other rights or remedies of the *Client*, the *Contractor* shall make good any such loss or damage however caused or occasioned which occurs before delivery.
- 70D.2            Clause 70D.1 shall apply notwithstanding that the Articles may have been inspected by the *Supervisor* or that the title therein may have passed to the *Client* earlier than upon delivery.
- 70D.3            Unless otherwise agreed and save for the provisions of clause 70D.4, the *Contractor* shall not after delivery be at risk in respect of the Articles, except where the *Supervisor* rejects any Article under clause 27C, in which case the risk of the rejected Article shall revert to the *Contractor* on the earlier of:
- 70D.3.1           the removal of the Article in accordance with clause 27C.4; or
- 70D.3.2           the close of business on the last day in which the *Contractor* is required to remove the rejected Article in accordance with clause 27C.4; or
- 70D.3.3           the return of the Article by the *Client* in accordance with clause 27C.5.
- 70D.4            Notwithstanding the provisions of clause 70D.3, if the *Contractor* has given notice of objection under clause 27C.7, it shall not be at risk in respect of the rejected Article where a dispute between the parties relating to the rejection remains unresolved and the Article remains in the possession of the *Client*.
- 70D.5            This clause shall not apply to any Articles issued to the *Contractor* by or on behalf of the *Client* in connection with which the *Contractor* is required to carry out any service. Such Articles shall be subject to clause 70B.”
- 73.3            Insert Clause 73.3:
- “Notwithstanding the above, the *Contractor* has full responsibility for all Plant and Materials prior to Completion of the works and shall compensate the *Client* for any loss or damage occurring to the same.”
- 73A            Insert a new Clause 73A:

**“Redundant materiel**

- 73A.1            Redundant Materiel shall mean Materiel as defined in Clause 11.2 (Definitions) that is identified as surplus to the requirement of the contract for whatever reason.
- 73A.2            All Redundant Materiel resulting from work carried out under, or procured for the purposes of the contract, the costs of which have been paid by the *Client* under the contract, or which is otherwise owned by the *Client*, shall be disposed of as follows:
- 73A.2.1           On completion of the contract or earlier if appropriate, the *Contractor* shall prepare a list of those items of the Materiel which are considered to be:



- (i) serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and
- (ii) unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.

73A.2.2 The *Contractor* shall send the lists referred to in sub-sub-clause 73A.2.1 (i) and 73A.2.1 (ii) above to the Commercial Officer named in the contract.

73A.2.3 Within three months of the date of receipt of the lists, the *Client* shall issue disposal instructions to the *Contractor*. Such disposal instructions shall require that the items of materiel are either:

- (i) transferred to other subsisting contracts; or
- (ii) subject to contract, retained by the *Contractor* for use in the performance of future contracts placed with the *Contractor*; or
- (iii) subject to contract, repaired by the *Contractor*; or
- (iv) at the direction of the *Client*, sold by the *Contractor*, acting on behalf of the *Client*, for the best price reasonably obtainable. Materiel designated in accordance with sub-sub-clause 2.a.(ii) above shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

73A.3 The proceeds of the sale of items of Materiel sold pursuant to sub-sub-clause 73A.2.3(iv) above shall be credited to the *Client* in accordance with arrangements made between the *Contractor* and the *Client*.

73A.4 A list of the items sold by the *Contractor* shall be sent to the Commercial Officer specified in the contract together with a statement of the proceeds of sale."

73B Insert a new Clauses 73B to 73D:

### **"Special Procedure for Initial Spares**

#### **Background and Scope of the Procedure**

73B.1 When new equipment is provided, or existing equipment modified, it is imperative that its operational efficiency is not impaired by lack of spare parts, should a functional failure occur. Suitable arrangements must, therefore, be made to ensure that a supply of spare parts is available before, or at least as soon as, the new or modified equipment is brought into use.

73B.2 The administration of store required for the Armed Forces is a complex operation, including the technical assessment of precisely which spares will be required ('Ranging'), in what quantity, ('Scaling'), and with what identification (NATO Stock Nos, Descriptions, Special Packaging, etc.). These detailed assessments inevitably take time and interim arrangements are therefore necessary to ensure the timely supply of such spares as are

considered necessary to maintain the new (or modified) equipment in full operational condition during the initial period of use.

73B.3 Number not used.

73B.4 Number not used.

73B.5 This Clause 73B procedure requires the *Contractor* to draw up, at the earliest possible moment and in accordance with such technical information and assistance as may be provided by the *Client*, a list of spare parts which he considers will be sufficient in type and quantity to maintain the operational efficiency of the new or modified equipment during an initial period of use (such period being two years, unless otherwise stated in the contract). Lists of spares required under Part A (New Equipments) should be submitted on DEFFORM 82A and those under Part B (Modifications) on DEFFORM 82B. Any further information or guidance which the *Contractor* may require concerning the assessment of spares, or completion of DEFFORM 82A or 82B, should be obtained from the relevant Project Manager.

73C.1 **Packaging (for Articles other than Munitions)**

73C.1 For the purposes of this clause:

73C.1.1 "Packaging" when used as a verb shall mean the preparation of Articles for transportation, storage and delivery in accordance with this Contract. The term includes, as appropriate, cleaning and preservation processes, packing techniques and marking procedures.

73C.1.2 "Packaging" when used as a noun shall mean the materials, and components, used for the preparation of the Articles for transportation, storage and delivery in accordance with this Contract.

73C.1.3 "Packaging Design Authority" or "PDA" shall mean the organisation that is responsible for the design of the packaging, identified in Box 3 of DEFFORM 111.

73C.1.4 "Military Packager Approval Scheme" or "MPAS" shall mean an Authority sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet ("SPIS") designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4).

73C.1.5 "Commercial Packaging" shall mean commercial Packaging for military use as described in Def Stan 81-041 (Part 1).

73C.1.6 "Military Level Packaging" or "MLP" shall mean Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain.

73C.1.7 "Military Packaging Level" or "MPL" shall have the meaning described in Def Stan 81-041 (Part 1).

73C.1.8 "Primary Packaging Quantity" or "PPQ", and Standard Family Specification ("SFS") shall have the meaning as described in Def Stan 81-041 (Part 1).

73C.1.9 "Robust Articles" shall mean Robust items as described in Def Stan 81-041 (Part 2).

73C.1.10 “Dangerous Goods” shall mean those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

- (i) Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (“CDG”) (as amended 2011);
- (ii) European Agreement Concerning the International Carriage of Dangerous Goods by Road (“ADR”);
- (iii) Regulations Concerning the International Carriage of Dangerous Goods by Rail (“RID”);
- (iv) International Maritime Dangerous Goods (“IMDG”) Code;
- (v) International Civil Aviation Organisation (“ICAO”) Technical Instructions for the Safe Transport of Dangerous Goods by Air; and
- (vi) International Air Transport Association (“IATA”) Dangerous Goods Regulations.

73C.1.11 “Safety Data Sheet” shall have the meaning as defined in REACH.

#### Specifications for Packaging

73C.2 General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) “Packaging of Defence Materiel”. Def Stans, NATO Standardisation Agreements (“STANAGs”) and further information are available from the DStan internet site at: <http://www.dstan.mod.uk/>

73C.3 Not Used.

73C.4 In the event of conflict between this Contract and Def Stan 81-041, this Contract shall take precedence.

#### Responsibilities

73C.5 Packaging responsibilities are as follows:

73C.5.1 The *Contractor* shall be responsible for providing Packaging which fully complies with the requirements of this Contract.

73C.5.2 The *Client* shall indicate in this Contract or order raised against a framework agreement (where applicable) the standard or level of Packaging required for each Article, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in this Contract or order, the *Contractor* shall request such instructions from the *Client* before proceeding further.

73C.5.3 The *Contractor* shall ensure all relevant information necessary for the effective performance of this Contract is made available to all Subcontractors.

73C.5.4 Where the *Contractor* or any of its Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Articles they shall use DEFFORM 129B to feedback these concerns to the *Contractor* or *Client*, as appropriate.

73C.5.5 Where the volumetric data of individual package designs is required to be compiled as part of the codification data set, the *Contractor* shall do so in accordance with clause 73D.

#### Commercial Packaging

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- 73C.6 The *Contractor* shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:
- 73C.6.1 The *Contractor* shall provide Packaging which:
- (i) will ensure that each Article may be transported and delivered to the consignee named in this Contract in an undamaged and serviceable condition; and
  - (ii) is labelled to enable the contents to be identified without need to breach the package; and
  - (iii) is compliant with statutory requirements and this clause.
- 73C.6.2 The Packaging used by the *Contractor* to supply identical or similar Articles to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
- (i) reference in this *Contract* to a PPQ means the quantity of an Article to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
  - (ii) Robust Articles, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with clauses 73C.13 (Package labelling and marking) to 73C.16 (Consignment of aggregated packages). References to "PPQ packages" in subsequent text shall be taken to include Robust Articles; and
  - (iii) for ease of handling, transportation and delivery, packages which contain identical Articles may be bulked and overpacked, in accordance with clauses 73C.13 (Package labelling and marking) to 73C.15 (Bar code marking).

### Packaging Regulations for Dangerous Goods

- 73C.7 The *Contractor* shall ascertain whether the Articles being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
- 73C.7.1 The Health and Safety At Work Act 1974 (as amended);
- 73C.7.2 The Classification Hazard Information and Packaging for Supply Regulations (CHIP) 2009 (as amended);
- 73C.7.3 The REACH Regulations 2007 (as amended); and
- 73C.7.4 The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- 73C.8 The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
- 73C.8.1 The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
- 73C.8.2 The Air Navigation (Amendment) Order 2019.
- 73C.9 As soon as possible, and in any event no later than one (1) month before delivery is due, the *Contractor* shall provide a Safety Data Sheet in respect of

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each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended).

UK military or NATO Packaging

73C.10 The *Contractor* shall comply with the requirements for the design of MLP which include Clauses 73C.10 (UK military or NATO Packaging) and 73C.11 (Military Packaging design procedure) as follows:

73C.10.1 Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the *Client* that its quality systems and military package design expertise are of an equivalent standard.

Note 1: The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCG-SCEng-Pkg

MOD Abbey Wood

Bristol, BS34 8JH

Tel. +44(0)30679-35353

DESSEOCSCG-SCEng-Pkg@mod.gov.uk

Note 2: The MPAS Documentation is also available on the DStan website

73C.10.2 MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a Service Packaging Instruction Sheet (SPIS), in accordance with Def Stan 81-041 (Part 4).

73C.10.3 The *Contractor* shall ensure a search of the SPIS index (the "SPIN") is carried out to establish the SPIS status of each requirement (using DEFFORM 129A 'Application for Packaging Designs or their Status').

73C.10.4 New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.

73C.10.5 Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated by this Contract. When an SFS is used or replaces a SPIS design, the *Contractor* shall upload this information on to SPIN in Adobe PDF.

73C.10.6 All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the *Contractor* on to SPIN. The format shall be Adobe PDF.

Manufacture of Packaging to a Military Packaging Level

73C.10.7 Where it is necessary to use an existing SPIS design, the *Contractor* shall ensure the Packaging manufacturer is a registered organisation in accordance with Clause 73C.10.1 (UK military or NATO Packaging), or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The *Contractor* shall ensure, as far as possible, that the SPIS is up to date.

Intellectual Property Rights (IPR)

- 73C.10.8 The documents supplied under Clause 73C.10.6 (UK military or NATO Packaging) shall be considered as a contract data requirement and be subject to the terms of clauses 22C and 22E.

Military Packaging design procedure

- 73C.11 Unless otherwise stated in this Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

- 73C.11.1 If the *Contractor* or its Subcontractor is the PDA it shall:

- (i) On receipt of instructions received from the *Client's* representative nominated in Box 2 of DEFFORM 111, prepare the required package design in accordance with Clause 73C.10 (UK military or NATO Packaging).
- (ii) Where the *Contractor* or its Subcontractor is registered it shall, on completion of any design work, provide the *Client* with the following documents electronically:
  - (A) a list of all SPIS which have been prepared or revised against this Contract; and
  - (B) a copy of all new/revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
- (iii) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow Clause 73C.11.1(ii) (Military Packaging design procedure).

- 73C.11.2 Where the *Contractor* or its Subcontractor is not the PDA and is un-registered, it shall not produce, modify or update SPIS designs. It shall obtain current SPIS design(s) from the *Client* or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.

- 73C.11.3 Where the *Contractor* or its Subcontractor is un-registered and has been given *Client* to produce, modify, and update SPIS designs by this Contract, it shall obtain approval for their design from a registered organisation using DEFFORM 129A before proceeding, then follow Clause 73C.11.1(ii) (Military Packaging design procedure).

- 73C.11.4 Where the *Contractor* or its Subcontractor is not a PDA but is registered, it shall follow Clauses 73C.11.1(i) and 73C.11.1(ii) (Military Packaging design procedure).

Tools

- 73C.12 If Special Jigs, Tools Etc. are required for the production of MLP, the Contractor shall obtain written approval from the *Project Manager* before providing them.

Package labelling and marking

- 73C.13 In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

Labelling – General

- 73C.13.1 If this Contract specifies UK or NATO MLP, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Clause 73C (Packaging (for Articles other than Munitions)) as follows:

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- (i) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

### Marking – General

- (ii) Each consignment package shall be marked with details as follows:
  - (A) name and address of consignor;
  - (B) name and address of consignee (as stated in this Contract or order);
  - (C) destination where it differs from the consignee's address, normally either:
    - 1) delivery destination/address; or
    - 2) transit destination, where delivery address is a point for aggregation/disaggregation and/or onward shipment elsewhere, e.g., railway station, where that mode of transport is used; and
  - (D) the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
- (iii) If aggregated packages are used, their consignment marking and identification requirements are stated at Clause 73C.16 (Consignment of aggregated packages).

### Marking of Commercial Packaging

73C.13.2 If this Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Articles as shown in this Contract schedule, to state the following:

- (i) description of the Article;
- (ii) the full thirteen digit NATO Stock Number ("NSN");
- (iii) the PPQ;
- (iv) maker's part/catalogue, serial and/or batch number, as appropriate;
- (v) the Contract and order number when applicable;
- (vi) the words "Trade Package" in bold lettering, marked in blue in respect of trade packages, and black in respect of export trade packages;
- (vii) shelf life of item where applicable;
- (viii) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
- (ix) any statutory hazard markings and any handling markings, including the mass of any package which exceeds three (3) kg gross; and
- (x) any additional markings specified in this Contract.

### Bar code marking

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- 73C.14 Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
- 73C.14.1 the full 13-digit NSN;
  - 73C.14.2 denomination of quantity ("D of Q");
  - 73C.14.3 actual quantity (quantity in package);
  - 73C.14.4 manufacturer's serial number and/or batch number, if one has been allocated; and
  - 73C.14.5 the unique order identifier.
- 73C.15 Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111.

### Consignment of aggregated packages

- 73C.16 The requirements for the consignment of aggregated packages are as follows:
- 73C.16.1 With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in this Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Articles of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
  - 73C.16.2 Two adjacent sides of the outer container shall be clearly marked to show the following:
    - (i) class group number;
    - (ii) name and address of consignor;
    - (iii) name and address of consignee (as stated on this Contract or order);
    - (iv) destination if it differs from the consignee's address, normally either:
      - (A) delivery destination/address; or
      - (B) transit destination, if the delivery address is a point of aggregation/disaggregation and/or onward shipment e.g. railway station, where that mode of transport is used;
    - (v) where applicable, the reference number if the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case/container. If the Articles listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
    - (vi) shipping label in accordance with clause 58; and
    - (vii) any statutory hazard markings and any handling markings.

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Concessions

- 73C.17 Authorisation of the *Contractor* to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under this Contract, shall be considered as a change to the Scope.

Environmental - requirements for wood used in Packaging

- 73C.18 The *Contractor* shall ensure that timber and wood-containing products supplied under this Contract comply with Clause 27H and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

Environmental – Packaging and Packaging waste

- 73C.19 All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- 73C.20 In any design work the *Contractor* shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation.

Packaging design liability statement

- 73C.21 This Clause 73C (Packaging (for Articles other than Munitions)) is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- 73C.22 Liability for other Losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in this Contract.

**73D Supply of Information for NATO Codification and Defence Inventory**

Introduction

- 73D.1 The purpose of Codification is to catalogue Items of Supply, using the minimum information required to distinguish them from similar items available. The cataloguing information is not normally a full technical specification and definition that could be used for manufacture of alternative items.
- 73D.2 For the purposes of this Clause:
- 73D.2.1 "Codification" shall mean the application of unique identification and classification information to Articles, using a common supply language (as set out in clause 73C which is recorded in sufficient detail to distinguish uniquely Items of Supply from other items, using NATO Stock Numbers or "NSN".
- 73D.2.2 "Codification Purposes" shall mean use to enable maximum effectiveness in national and international logistic support, data management in the area of materiel, supply and inventory introduction and management, throughout the life of an equipment, by the United Kingdom Ministry of Defence and its NATO partners.

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- 73D.2.3 "Codification Client" shall mean the United Kingdom National Codification Bureau or "UKNCB", except as provided in Clause 73D.11.
- 73D.2.4 "*Client's* Agent" shall mean the Government Departments or contractors authorised by the Codification Client to undertake NATO codification.
- 73D.2.5 "Form, Fit and Function" shall mean, in respect of each of its elements:
- (i) Form: The shape, size, dimensions, and other physically measurable parameters that uniquely characterise an article. For software, form denotes the language and media;
  - (ii) Fit: The characteristics of an article to enable it to interface or interconnect with a part of another article, including the dimensional relationship between mating parts and the limits of tolerances;
  - (iii) Function: The actions that a product is designed to perform in normal use or operation.
- 73D.2.6 "Item" shall mean the part or the whole of any Article or any other Article to the same design or any modification of it.
- 73D.2.7 "Item of Supply" shall mean an Item, or where two or more Items are attached or assembled together, the minimum assembly of Items listed in the Scope or elsewhere as being required to be delivered to the *Client* under this Contract.
- 73D.2.8 "Item Identification" shall mean the minimum information required to uniquely identify the Item of Supply derived from information supplied in response to the requirements specified in Clause 73C.
- 73D.2.9 "Technical Data" shall mean the cataloguing information identified in Clause 73C to be supplied to enable the creation of Item Identification.
- 73D.2.10 "Design Control Client" or "DCA" shall mean the individual, company, firm, corporation, designing Client or government department, which controls the design, characteristics and production of an Item by means of its engineering drawings, specifications and inspection requirements.
- 73D.2.11 "NATO Commercial & Government Entity code" or "NCAGE" shall mean the unique code allocated to a supplier by the UKNCB.
- 73D.3 In the case of an Item of Supply for which the *Contractor* is the DCA, the *Contractor* shall:
- 73D.3.1 provide Technical Data to the Codification Client, or the *Project Manager* specified by the Codification Client, where:
- (i) the Item of Supply is not already codified in the NATO Codification System or "NCS"; or
  - (ii) the *Contractor* has not previously supplied that information either in the recommended spare parts list supplied by the Contractor in the initial provisioning phase or under another contract;
- 73D.3.2 where the Item of Supply has already been NATO codified, supply the NSN(s) to the Codification Client, or the *Project Manager*; and
- 73D.3.3 inform the Codification Client, or its agent, when and to whom the data was supplied if the information has previously been supplied by the *Contractor*.

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- 73D.4 In the case of an Item of Supply for which the *Contractor* is not the DCA, the *Contractor* shall ensure that the Technical Data is supplied, either by the subcontract DCA or by the *Contractor*. The *Contractor* shall, where appropriate, consider including the terms of this clause, or equivalent text, in any Subcontracts, to ensure delivery of the cataloguing information.
- 73D.5 Unless otherwise provided by the Contract, the cost of supplying the information under Clauses 73D.3 and 73D.4 above, and any other information specifically called for under the Contract, shall be deemed to have been included in the Contract Price.
- 73D.6 The *Contractor* may from time to time be requested to supply additional information necessary for Codification. To the extent that it has the right to do so, the Contractor shall supply that additional data. The extent of information shall be governed by the requirements of the Codification system at that time. Full details of the Codification system can be obtained from the Codification Client.
- 73D.6.1 At any time during the life of the contract the *Contractor* shall notify the Codification Client of all modifications or design changes made to an Item of Supply, which affect the Item Identification, including reference number changes, Form, Fit or Function.
- 73D.6.2 Fair and reasonable payment, based upon the actual work involved, will be made to the Contractor for the supply of additional information under Clause 73D.6 above and, in respect of modifications and design changes approved by the Client; the supply of updated information under Clause 73D.6.1.
- 73D.7 Subject to the restrictions resulting from Clause 73D.9, the *Client* shall have the right, free of charge, to use and copy or have used and copied for Codification Purposes information supplied under the provisions of this Clause 73D, use and copying being limited to that necessary for Codification Purposes. The *Client* may convert or have converted any Technical Data provided in whatever format to an alternative format, including digital formats.
- 73D.8 Subject to the restrictions resulting from Clause 73D.9, the information constituting the Item Identification may be included in the databases of codification data which are produced by the *Client* or any international organisation of which the *Client* is a member and may be made available to other Governments, contractors, organisations or individuals who are authorised to have access to those databases by the *Client* or the organisation(s) of which the *Client* is a member.
- 73D.9 The *Contractor* shall endeavour to ensure that all information supplied under this Clause 73D can be used for Codification Purposes; however, where any of the information supplied is marked to indicate it is proprietary in nature the *Contractor* shall indicate the restrictions which apply to its use.
- 73D.10 The Codification Client shall not retain or use the Technical Data supplied under this Clause 73D for any purpose other than for Codification.
- 73D.11 If the DCA is located in a NATO country other than the UK, the equivalent organisation in that NATO country shall be substituted for the UKNCB. All contact between the *Contractor* and those equivalent organisations will be via the UKNCB.
- 73D.12 If the DCA is located in a country which is not a member of the NATO Alliance or a NATO sponsored (NCS participating) country, the Codification Client will

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be deemed to be the UKNCB, which may nominate an agent to act on its behalf.

73D.13 The *Contractor*, any Subcontractor or supplier may contact the Codification Client for any information concerning the NCS.

## 8 Risks and insurance

80.1 At the end of the first sentence add:

“(except to the extent these are covered by the Insurance Table (Required Insurances) at Clause 83..”

Delete the bullet points and substitute with:

- Claims, proceedings, compensation and costs payable which are due to negligence, breach of statutory duty or interference with any legal right by the *Client* or by any person employed by or contracted to him except the *Contractor*,
- Discovery of fossils and archaeological remains,
- Discovery of contaminated land not identified to the *Contractor* prior to the date of the contract by the *Client* and which could not have been and/or was not identified upon reasonable preliminary investigations or surveys by the *Contractor*,
- The presence of all types of asbestos brown, blue or white, on, in under or permeating from the Site which have not been identified during any asbestos survey previously undertaken whether internally or externally prior to the date of contract by the *Client* or which could not have been and/or was not identified upon reasonable preliminary investigations or surveys by the *Contractor*,
- The presence, emission or release of Dangerous Substances, as defined by the Dangerous Substances Directive (76/464/EEC) and all substances which are contained on the UK Red List, Black List or Grey List in relation to Dangerous Substances not notified to the *Contractor* prior to the date of the contract and caused by any act or omission of the *Client*,
- Riot, War, invasion, act of foreign enemies or hostilities,
- Civil war, rebellion, revolution, terrorism, insurrection or military usurped power,
- Ionising radiations or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,
- Significant harm to the works or any part of Site in respect of which the works are to be carried out or pollution of controlled waters caused in accordance with the definitions contained in the EPA 1990 Part IIA by any act, default or omission of the *Client*, or delay to the works as a direct result of such harm or pollution and relating to substances which were released onto the Site,
- Insufficient capacity of existing utilities (gas, electricity, water, storm and foul drains, BT, etc) supply,
- Condition of existing utilities (gas, electricity, water, storm and foul drains, BT, etc) supply is in poor condition at connection point,

- Loss of use, delay or damage to the works, or any part of the Site resulting from;
  - use of and/or discovery of munitions, or
  - pressure waves caused by the speed of aircraft or other aerial devices travelling at sonic or super sonic speeds,
  - restrictions, unless such delay lasts for no more than 1 hour,
- Loss of or wear or damage to the parts of the works taken over by the *Client*, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to:
  - a Defect which existed at take over,
  - an event occurring before take over which was not itself an *Client's* risk, or the activities of the *Contractor* on the Site after take over,
- Loss of or wear or damage to the works and any Equipment, Plant and Materials retained on the Site by the *Client* after a termination, except loss, wear or damage due to the activities of the *Contractor* on the Site after the termination,
- Additional *Client's* risks stated in the contract Data.

83

Delete Clause and replace with:

**Insurance Requirements of Response Table**

Class of Required Insurance (Part 1 Insurance Provisions)	Period of policy / renewal frequency	Insurer(s) identity (including any excess layer or co-insurers)	Tenderer proposed maximum deductible threshold in respect of Clause 15 Insurance Table of Schedule 5	Agreement to the requirements of the insurance clauses at Clause 1 to 14 of Schedule 5 (or confirm areas for variation for MoD's consideration)	Agreement to the requirements of Clause 15 Insurance Table of Schedule 5 (or confirm areas for variation for MoD's consideration)
1. Contractors "All Risks" Insurance (CAR)					
2. Third Party Public and Products Liability Insurance					

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Class of Required Insurance (Part 1 Insurance Provisions)	Period of policy / renewal frequency	Insurer(s) identity (including any excess layer or co-insurers)	Tenderer proposed maximum deductible threshold in respect of Clause 15 Insurance Table of Schedule 5	Agreement to the requirements of the insurance clauses at Clause 1 to 14 of Schedule 5 (or confirm areas for variation for MoD's consideration)	Agreement to the requirements of Clause 15 Insurance Table of Schedule 5 (or confirm areas for variation for MoD's consideration)
3. Professional Indemnity Insurance					
[4. Contractors Pollution Liability Insurance]					
5. Goods in Transit Insurance (United Kingdom transits)					
6. Cargo Insurance (for transits originating outside of the United Kingdom)					
7. Insurances required by law					

**Insurance Requirements of Response Table**

Class of Required Insurance (Part 2 Insurance Provisions)	Period of policy / renewal frequency	Insurer(s) identity (including any excess layer or co-insurers)	Tenderer proposed maximum deductible threshold in respect of Clause 30 Insurance Table of Schedule 13	Agreement to the requirements of the insurance clauses at Clause 30 (or confirm areas for variation for MoD's consideration)	Agreement to the requirements of Clause 30 Insurance Table of Schedule 13 (or confirm areas for variation for MoD's consideration)
1. Third Party Public and Products Liability Insurance					
2. Professional Indemnity Insurance					
5. Insurances required by law					

83A Add a new Clause 83A

**"Insurance evaluation criteria****Marking scheme for insurer identity**

83A.1 The insurer or insurers proposed by the *Contractor* against each class of insurance in the column headed "Insurer identity (including any excess layer insurers)" in the Insurance Requirements of Response Table are considered by the *Client* based on its professional judgement (which may include the judgement of its professional insurance advisers) to be a reputable insurer(s) of sufficient standing for the class of insurance and the location of the services in question taking into consideration matters including, but not limited to, ownership, management, operating environment, reinsurance protection, lines of business, profitability and business philosophy (a "Reputable Insurer"). This will be evaluated on a Pass/Fail basis and the insurer proposed by the *Contractor* in the Insurance Requirements Table for each category of insurance must be a Reputable Insurer to constitute a Pass.

**Tenderer proposed maximum deductible threshold**

- 83A.2 The maximum deductible threshold proposed by the *Contractor* for each and every occurrence for each class of insurance in the column headed “Proposed maximum deductible threshold” of the Insurance Requirements of Response Table is considered by the *Client* based on its the professional judgement (which may include the judgement of its professional insurance advisers) to be reasonable in the insurance market prevailing at the point of the submission by the *Contractor* of its response (a “Reasonable Maximum Deductible Threshold”). This will be evaluated on a Pass/Fail basis and each proposed maximum deductible threshold must be a Reasonable Maximum Deductible Threshold to constitute a Pass.

**Amendments to Schedule 5 (Clause 15 Insurance Table (Required Insurances))**

- 83A.3 Any amendments the *Contractor* makes to Schedule 5 other than the insertion of Reasonable Maximum Deductible Thresholds shall be assessed against the following criteria. The amendments will be assessed as a whole to determine the level of risk to the *Client* in accordance with the Marking Scheme set out below.”

Marking Scheme	Evaluation Guidance
[10 or Pass]	No amendment to the <i>Client</i> minimum insurance requirement other than 'the insertion of Reasonable Maximum Deductible Thresholds into Clause 15  Insurance Table (Required Insurances) of the Schedule 5 contract
[8 or Pass]	Amendment to the <i>Client</i> minimum insurance requirement that is not considered to confer any adverse risk to the <i>Client</i> or any material diminution in the required insurance cover of the <i>Client</i>
[6 or Fail]	Amendment to the <i>Client</i> minimum insurance requirement that is considered to confer some appreciable risk to the <i>Client</i> or diminution in the required insurance cover of the <i>Client</i>
[4 or Fail]	Insufficient detail or is considered to leave gaps in the level or extent of insurance cover which exposes the <i>Client</i> to significant adverse risk or significantly material diminution in the required insurance cover of the <i>Client</i>
[0 or Fail]	Unmarked. The above table has not been completed.



9

**Termination**

90.1 Renumber Clause 90.1 as 90.1.1.

90.1.2 Insert new Clauses 90.1.2 and 90.1.3:

“90.1.2 In the event of such notice being given the *Client* will at any time before the expiration of the notice of termination be entitled to exercise such of the following powers as he considers expedient to direct:

- a) the *Contractor*, where work has not been commenced, to refrain from commencing work;
- b) the *Contractor* to complete in accordance with the works, or any part thereof in course of design, construction, repair maintenance or operation at the expiration of the notice, and to hand over the same at such times or times as may be mutually agreed on or, in default of agreement at the time or times provided by this contract;
- c) that the *Contractor* will as soon as may be reasonably practicable after receipt of such notice:
  - (i) take such steps as will ensure that work on the design, construction repair and maintenance tasks is reduced as rapidly as possible;
  - (ii) as far as possible consistent with Clause 90.1.2c(i) to concentrate work on the completion of tasks already on a partly finished state;
  - (iii) determine on the best possible terms such Subcontracts and orders for design, construction and repair and maintenance and for materials and parts as have not been completed or delivered, observing in connection with Clauses 90.1.2c(i) and 90.1.2c(ii) any direction given under Clause 90.1.2a and 90.1.2b as far as may be possible.

90.1.3 The *Contractor* will in any *Sub-contract* or order the value of which is £10,000 sterling or over made or placed by him with any one *Subcontractor* in connection with or for the purpose of this contract take power to determine such *Sub-contract* in the event of termination of this contract under this Clause upon the terms of Clauses 90.1.2 to 90.1.3 inclusive.

90.2 Delete the Termination Table and insert the following:

Termination Table			
Terminating Party	Reason	Procedure	Amount due
The <i>Client</i>	A reason other than R1 – R22 and RX1-RX6	P1, P2 , P4, P5 and P6	A1, A2 and A3 (where <i>Contractor</i> default)
	R1 - R15 (including RX1 – RX6),	P1, P2, P3, P4, P5 and P6	A1, A3 and A5

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	R18, R22 and R24		
	R17, R19 or R20	P1, P4, P5 and P6	A1, A2, A3 and A5
The <i>Contractor</i>	R1 – R10, RX1 – RX5 or R16	P1, P4, P5 and P6	A1, A2 and A5

90.3 In the second sentence, line one after R15 add “(including RX1 – RX6)”. Delete R22 and replace with R21-24” (although R21 and R23 are not used).

90.4 At the end of the Clause, insert:

“save to the extent only that the *Contractor* is directed to do so in accordance with Clause 90.1.2 above.”

90A Add a new Clause 90A:

**“Termination for Convenience – Contracts of £5 million and over”**

90A.1 The *Client* shall have the right to terminate the contract in whole or in part at any time by giving the *Contractor* at least 20 (twenty) Business Days written notice (or such other period as may be stated in the contract). Upon expiry of the notice period the contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the contract is being terminated, the *Client* and the *Contractor* shall owe each other no further obligations in respect of the part of the contract being terminated, but will continue to fulfil their respective obligations on all other parts of the contract not being terminated.

90A.2. Following the above notification the *Client* shall be entitled to exercise any of the following rights in relation to the contract (or part being terminated) to direct the *Contractor* to:

90A.2.1 not start work on any element of the *Contractor* Deliverables not yet started:

90A.2.2 complete in accordance with the contract the provision of any element of the *Contractor* Deliverables;

90A.2.3 as soon as may be reasonably practicable take such steps to ensure that the production rate of the *Contractor* Deliverables is reduced as quickly as possible;

90A.2.4 terminate on the best possible terms any Sub-contracts in support of the *Contractor* Deliverables that have not been completed, taking into account any direction given under sub Clauses b to c of this Clause.

90A.3 Where this Clause applies (and subject always to the *Contractor*’s compliance with any direction given by the *Client* under Clause 90A.2):

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- 90A.3.1 the *Client* shall take over from the *Contractor* at a fair and reasonable price all unused and undamaged materiel and any *Contractor* Deliverables in the course of manufacture that are:
- 90A.3.1.1 in the possession of the *Contractor* at the date of termination; and
- 90A.3.1.2 provided by or supplied to the *Contractor* for the performance of the contract, except such materiel and *Contractor* Deliverables in the course of manufacture as the *Contractor* shall, with the agreement of the *Client*, choose to retain;
- 90A.3.2 the *Contractor* shall deliver to the *Client* within an agreed period, or in absence of such agreement within a period as the *Client* may specify, a list of:
- 90A.3.2.1 all such unused and undamaged materiel; and
- 90A.3.2.2 *Contractor* Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the *Client*, and shall deliver such materiel and *Contractor* Deliverables in accordance with the directions of the *Client*;
- 90A.3.2.3 in respect of Services, the *Client* shall pay the *Contractor* fair and reasonable prices for each Service performed, or partially performed, in accordance with the contract.
- 90A.4 The *Client* shall (subject to Clause 90A.5 below and to the *Contractor*'s compliance with any direction given by the *Client* in Clause 90A.2 above) indemnify the *Contractor* against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the *Contractor* by reason of the termination of the contract, subject to:
- 90A.4.1 the *Contractor* taking all reasonable steps to mitigate such loss; and
- 90A.4.2 the *Contractor* submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the *Contractor* as a result of the termination of the contract or relevant part.
- 90A.5 The *Client*'s total liability under the provisions of this Clause shall be limited to the total price of the *Contractor* Deliverables payable under the contract(or relevant part), including any sums paid, due or becoming due to the *Contractor* at the date of termination.
- 90A.6 The *Contractor* shall include in any *Sub-contract* over £250,000 which it may enter into for the purpose of the contract, the right to terminate the *Sub-contract* under the terms of Clauses 90A.1 to 90A.5 except that the:
- 90A.6.1 name of the *Contractor* shall be substituted for the *Client* except in Sub-Clause 90A.3.1;
- 90A.6.2 notice period for termination shall be as specified in the *Sub-contract*, or if no period is specified 20 (twenty) Business Days; and
- 90A.6.3 *Contractor*'s right to terminate shall be restricted by including the following additional Clause "Provided that this right is not exercised unless the main

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contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of Clause 90A”.

- 90A.7 Claims for payment under this condition shall be submitted in accordance with the *Client's* direction.]
- 90B Insert a new Clause 90B:
- 90B.1 In addition to any other rights and remedies, the *Client* shall have the right to terminate the contract (in whole or in part) with immediate effect by giving written notice to the *Contractor* where the *Contractor* is in material breach of its obligations under the contract.
- 90B.2 Where the *Client* has terminated the contract under Clause 90B.1 the *Client* shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the contract, including but not limited to any costs and expenses incurred by the *Client* in:
- 90B.2.1 carrying out any work that may be required to make the *Contractor* Deliverables comply with the contract; or
- 90B.2.2 obtaining the *Contractor* Deliverables in substitution from another supplier.
- 91.1 Delete the first main bullet point and replace with:
- “If the other Party is an individual or a firm:”
- R1 Delete R1 (from the first bullet point) and replace it with “the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within 3 Business Days from the date on which the *Contractor* is notified of the presentation;”
- R2 Delete R2 (from the second bullet point) and replace it with “the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm;”
- R4 Delete R4 (from the fourth bullet point) and replace it with “the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors (including a Scheme of Arrangement under Part 26 and Part 26A Companies Act 2006);”
- RX1 Insert a new bullet point (fifth bullet point):
- “the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to section 253 of the Insolvency Act 1986;”
- RX2 Insert a new bullet point (sixth bullet point):
- “the court making an interim order pursuant to section 252 of the Insolvency Act 1986;”
- RX3 Insert a new bullet point (seventh bullet points):

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“where the *Contractor* is either unable to pay his debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The *Client* shall regard the *Contractor* as being unable to pay his debts if:

- a. he has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 within 21 days of service of the statutory demand on him; or (RX3.1)
- b. execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.” (RX3.2).

RX4 Insert a new bullet point (eighth bullet point):

“the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within 3 Business Days from the date on which the *Contractor* is notified of the presentation; or”

RX5 Insert a new bullet point (ninth bullet point):

“the court making an award of sequestration in relation to the Contractor's estates.”

91.1 Delete the second main bullet point and replace it with:

“Where the *Contractor* is a company registered in England”

R5 Delete R5 (from the first bullet point) and replace it with “the court making an order that the company shall be wound-up;”

R7 Delete R7 (from the third bullet point) and replace it with “the company passing a resolution that the company shall be wound- up;”

R8 Delete R8 (from the fourth bullet point) and replace it with “an application is made to court, or an order is made, for the appointment of an administrator of the Company or a notice of intention to appoint an administrator is filed at the Court or an administrator is appointment over the Company;”

R9 Delete R9 (from the fifth bullet point) and replace it with “the appointment of a Receiver or manager or administrative Receiver.”

R10 At the end of R10 (the sixth bullet points) insert: “(including a Scheme of Arrangement under Part 26 and Part 26A Companies Act 2006).”

91.1 At the end of the Clause insert:

“The *Client* may also terminate if any event described in Clause 91.1 above occurs in respect of any company, which from time to time has guaranteed the obligations of the *Contractor* in connection with this contract.

Where the *Contractor* is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject,

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are similar in nature or effect to those specified in sub-Clauses R5 – R10 above.

Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the *Client* and the *Contractor*.”

91.1A Insert a new Clause:

“The *Client* may terminate if the *Contractor* applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986.” (RX6)

91.2 Delete the first sentence and substitute with:

“The *Client* may terminate all or part of the Contractor’s employment under this contract if the *Contractor* has defaulted in one of the following ways and not put the default right within four (4) weeks of the notification.”

Delete the first bullet point and substitute with:

“Failed to Provide the Works or any portion thereof within the time or times specified to the standards agreed in this contract. (R11)”

91.4 Delete this Clause and substitute with:

“The *Contractor* may terminate if the *Client* has not paid an amount certified by the Project Manager as properly due and payable (and no valid pay less notice has been given) within thirteen (13) weeks of the date of the Relevant Day. (R16)”

91.5 Delete the words “Either Party” and replace them with “The *Client*”.

In line 1, after “if”, delete “the Parties have” and substitute with:

“either Parties has”.(R17)

91.6 Delete the second and third bullet point and substitute with:

- “*Client* may terminate if the instruction was due to any other reason other than a default by the *Contractor* or *Client* (R19).”

91.7 Delete this Clause and substitute with:

“The *Client* may terminate if an event which the Parties could not reasonably prevent has substantially affected the Contractor’s work for a continuous period of more than thirteen (13) weeks (R20).”

91.8 Delete this Clause from “*unless*” in the first line until the end of the Clause.

91.9 Insert new Clause 91.9:

“The *Client* may terminate this contract in accordance with Clauses 15 (Corrupt Gifts and Payments of Commission), 16.4 (Conflicts of Interest)

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20.11 (Fraud and Prevention of Corruption) and 23 (Change of Control of the *Contractor*) (R24).R24”

92.1 Delete the Clause after the word “works” and substitute with:

“(and employ other contractors for that purpose) and may use any Plant and Materials provided by the contractor (P1).”

92.2 Delete P2 and substitute with:

“In addition to any goods and materials that may have vested in the *Client*, the *Client* may instruct the *Contractor* to remove any Equipment, Plant and Materials and assign the benefit of any *Sub-contract* or other contract related to performance of this contract to the *Client*. The *Client* may, at his discretion take over from the *Contractor* at a fair and reasonable price, if payment has not already been made, all used and undamaged materials, bought-out parts and components, and works in course of design or construction, in the possession of the *Contractor* and properly provided by or supplied to the *Contractor* for the performance of this contract. The *Contractor* will prepare and deliver to the *Client* within an agreed period, or in default of agreement within such period as the *Client* may specify, a list of all such unused and undamaged materials, in addition to materials vested in the *Client*, bought-out parts and components and works in the course of design or construction liable to be taken over by or previously belonging to the *Client* and will deliver these in accordance with the directions of the *Client*.”

Delete P4 and substitute with:

“The *Contractor* provides to the *Client* information and other things which the Scope states he is to provide at the end of the contract.”

Insert new Clauses 92.3- 92.6:

“92.3 Save as otherwise expressly provided in the contract:

- termination or expiry of this contract is without prejudice to any rights, remedies or obligations accrued under the contract prior to termination or expiration and nothing in the contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry and
- termination of this contract does not affect the continuing rights, remedies or obligations of the *Client* or the *Contractor* under Clause 8 (Risks and insurance) and Clause 92 (Procedures on termination) and under 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.

92.4 On the termination of the contract for any reason, the *Contractor* (P5):

- immediately returns to the *Client* all Confidential Information, Personal Data and IP Materials relating to the contract in its possession or in the

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possession or under the control of any Personnel which was obtained or produced in the course of providing the works,

- immediately delivers to the *Client* all property (including materials, documents, information and access keys) provided to the *Contractor* for the purposes of the contract. Such property is to be handed back in good working order (allowance to be made for reasonable wear and tear),
- assists and co-operates with the *Client* to ensure an orderly transition of the works to any replacement contractor and/or the completion of any work in progress,
- promptly provides all information concerning the works which may reasonably be requested by the *Client* for the purposes of adequately understanding the provision of the works or for the purpose of allowing the *Client* or any replacement contractor to conduct due diligence.

92.5 If the *Contractor* does not immediately return all Confidential Information, Personal Data, IP Materials relating to the contract and property, the *Client* may recover possession thereof and the *Contractor* grants a licence to the *Client* or its appointed agents to enter (for the purposes of such recovery) any premises of the *Contractor* or its Personnel (P5).

92.6 Where the contract is terminated the *Contractor* shall provide all reasonable assistance to assist with the orderly transition of the works to a replacement contractor and the provision of information concerning the works which the *Client* may request free of charge (P6)."

93.1 Delete this Clause and substitute with:

"The amount due on termination includes (A1)

- an amount due assessed as for normal payments;
- the Defined Cost for Plant and Materials which:
  - have been delivered and retained by the *Client*; or
  - the *Client* owns and of which the *Contractor* has to accept delivery
- other Defined Cost reasonably incurred in expectation of completing the whole of the works,
- any amounts retained by the *Client* excluding deductions made; or
- other amounts withheld by the *Client* on a permanent basis or to which the *Client* has subsequently become permanently entitled.

93.2 Delete A3 and A4 and substitute with:

A3 The *Client* may charge the *Contractor* (or may deduct the same from any amount otherwise due to the *Contractor*) for any such sum as may be

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reasonably estimated by the Project Manager of completing or procuring a third party to complete the works to the extent such costs exceed the payment which would otherwise have been payable to the *Contractor* for carrying out the remaining part of the works and provided that such estimate will be based on the *Client* using reasonable endeavours to mitigate any additional expenditure in obtaining replacement works. Any sum estimated as aforesaid which isn't recovered by the *Client* by way of deduction from payments otherwise due to the *Contractor* shall be payable by the *Contractor* to the *Client* as a debt on demand.

A4                    A deduction of any other sums that the *Client* is entitled to deduct under or in connection with the contract (whether arising under any term of this contract or under any statute or rule of law or of equity).

Insert new Clause:

"A5                    A deduction of any other sums that the *Client* is entitled to deduct under or in connection with the contract (whether arising under any term of this contract or under any statute or rule of law or of equity)."

93.7                  Insert new Clause 93.7:

"For the avoidance of doubt the *Client* will not be liable on termination for any *Contractor* loss of profits, bonuses (Clause X6) or incentives (Clause X20)."