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**Dated**

**2023**

**THE SECRETARY OF STATE OF DEFENCE**

**(1)**

**AND**

**REED IN PARTNERSHIP LIMITED**

**(2)**

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**CONTRACT**

**relating to**

**PROVISION OF CAREER TRANSITION  
PARTNERSHIP SERVICES**

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**THIS CONTRACT** is made on

2023

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR DEFENCE (the "Authority"); and**
- (2) **REED IN PARTNERSHIP LIMITED a company registered in England and Wales under company number REDADCTED whose registered office is at Academy Court, 94 Chancery Lane, London, WC2A 1DT (the "Supplier")**

(each a "**Party**" and together the "**Parties**").

**INTRODUCTION**

- (A) On 8 September 2022 the Authority advertised on the Defence Sourcing Portal ("**DSP**") (reference 702705451), inviting prospective suppliers to submit proposals for armed forces resettlement services in accordance with the published Services Description.
- (B) The Authority has a commitment to provide a robust and effective system of resettlement provision for all Armed Forces personnel and wishes to enter into a contract with the Supplier in order to provide services to assist all Armed Forces personnel (both regular and full-time reserve) to make a successful transition to civilian life, whether to civilian employment (including self-employment) which is appropriate to their skills, knowledge and experience and/or in accordance with their career aspirations or to retirement.
- (C) On 19 December 2022, the Authority issued an Invitation to Negotiate (ITN) on the DSP seeking tenders from providers of such services.
- (D) In response to the ITN, the Supplier submitted a tender to the Authority on 6 July 2023 through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the ITN and, in particular, the Supplier made representations to the Authority in its tender response in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- (E) On the basis of the Supplier's tender response, the Authority selected the Supplier as its preferred supplier to provide the Services.

- (F) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS AGREED** as follows:

## **SECTION A - PRELIMINARIES**

### **1 DEFINITIONS AND INTERPRETATION**

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

### **2 DUE DILIGENCE**

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

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



and such actions, timetable and costs are fully reflected in this Contract, including the Services Description and/or Authority Responsibilities as applicable.

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

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

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

### **3 WARRANTIES**

3.1 The Authority represents and warrants that:

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

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Contract;
- (c) this Contract is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Contract;
- (e) it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- (f) its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITN (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier

(and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;

- (k) the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- (m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- (n) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Commencement Date (if later than the date of signature of this Contract) by reference to the facts then existing.

3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.

3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.

- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## SECTION B - THE SERVICES

### 4 TERM

- 4.1 This Contract:

- (a) shall come into force on the Commencement Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 27 (*Confidentiality*), 28 (*Transparency and Freedom of Information*), 30 (*Publicity and Branding*), 32 (*Limitations on Liability*), 48 (*Waiver and Cumulative Remedies*), 49 (*Relationship of the Parties*), 51 (*Severance*), 53 (*Entire Contract*), 54 (*Third Party Rights*), 55 (*Notices*), 56 (*Disputes*), 57 (*Governing Law and Jurisdiction*), Schedule 5 (*Security Management*) and Schedule 6 (*Insurance*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 41 (*Termination Rights*), or extended in accordance with Clause 4.2 and 4.3, shall terminate at the end of the Initial Term.

- 4.2 Prior to expiry of the Initial Term, the Authority may extend the Initial Term (by providing a minimum of six Months' notice in writing) for a period of up to two (2) years (the "**First Extension Period**"). The notice shall specify the duration of the extension. For the avoidance of doubt, the Authority may extend the Initial Term more than once provided that the total duration of the First Extension Period does not exceed two (2) years.

- 4.3 Prior to expiry of the First Extension Period, the Authority may decide to exercise its option to extend for the Second Extension Period for a period of up to two (2) years provided that the Authority provides not less than six (6) Month's written notice. The notice shall specify the duration of the extension. For the avoidance of doubt, the Authority may extend the Second Extension Period more than once provided that the total duration of the Second Extension Periods does not exceed two (2) years.

### Condition Precedent

4.4 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 27 (*Confidentiality*), 28 (*Transparency and Freedom of Information*), 30 (*Publicity and Branding*), 32 (*Limitations on Liability*), 48 (*Waiver and Cumulative Remedies*), 49 (*Relationship of the Parties*), 51 (*Severance*), 53 (*Entire Contract*), 54 (*Third Party Rights*), 55 (*Notices*), 56 (*Disputes*) and 57 (*Governing Law and Jurisdiction*), this Contract is conditional upon:

- (a) the valid execution and delivery to the Authority of the Guarantee; and
- (b) the Supplier being certified (as a minimum) as compliant with Cyber Essentials PLUS,  
  
(together, the "**Condition Precedent**").

The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.

4.5 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days of the Effective Date then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.4:

- (a) this Contract shall automatically cease and shall not come into effect; and
- (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

4.6 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.4 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.5.

## **5 SERVICES**

### **Standard of Services**

5.1 The Supplier shall provide:

- (a) any Services in accordance with the Implementation Plan from (and including) the Commencement Date; and
- (b) the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.

5.2 The Supplier shall ensure that:

- (a) the Services:
  - (i) comply in all respects with the Services Description; and
  - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Contract; and
- (b) where:
  - (i) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Authority was receiving immediately prior to that Operational Service Commencement Date (such similar services being "**Preceding Services**"); and
  - (ii) the standard and level of service received by the Authority in respect of any of the Preceding Services in the 12 month period immediately prior to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being "**Relevant Preceding Services**"),

the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority in respect of the Relevant Preceding Services in the 12 month period immediately prior to the relevant Operational Service Commencement Date.

5.3 The Supplier shall:

- (a) perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:
  - (i) all applicable Law;
  - (ii) Good Industry Practice;
  - (iii) the Standards;
  - (iv) Schedule 5 (*Security Management*);
  - (v) the Quality Management Plans; and
  - (vi) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(v); and
- (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

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

### **Supplier covenants**

5.5 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 20 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

- (c) ensure that:
- (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
  - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 5 (*Security Management*)) shall notify the Authority 3 months before the release of any new Software or Upgrade;
  - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
  - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
  - (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Contract;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with any Other Supplier notified to the Supplier by the Authority from time to time by providing:



- (i) reasonable information (including any Documentation);
- (ii) advice; and
- (iii) reasonable assistance,

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

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

trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;

- (h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5(g);
- (i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
- (k) notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority; and
- (m) manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.

5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

5.7 Without prejudice to Clauses 25.2 and 25.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the

Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);

- (b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(j) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
- (c) meet all the costs of, and incidental to, the performance of such remedial work,

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

### **Specially Written Software warranty**

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

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

### **Continuing obligation to provide the Services**

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

- (a) any withholding of the Service Charges by the Authority pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Contract under Clause 41.3(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

#### **Power of attorney**

- 5.10 By way of security for the performance of its obligations under Clauses 5.5(g) and 5.5(h) (Supplier covenants) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.10 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

#### **Authority Responsibilities**

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

## **6 IMPLEMENTATION**

#### **Quality Management Plans**

- 6.1 The Supplier shall develop, within 20 Working Days of the Commencement Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Management Plans**").
- 6.2 The Supplier shall obtain the Authority Senior Non-Commercial Manager's written approval of the Quality Management Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Management Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 6.3 Following the approval by the Authority of the Quality Management Plans:

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

#### **Implementation Plan and Delays**

6.4 The Parties shall comply with the provisions of Schedule 13 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.

6.5 The Supplier shall:

- (a) comply with the Implementation Plan; and
- (b) ensure that each Milestone is Achieved on or before its Milestone Date.

6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

- (a) it shall:
  - (i) notify the Authority in accordance with Clause 35.1 (*Rectification Plan Process*); and
  - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
  - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 36 (*Delay Payments*) shall apply.

#### **Testing and Achievement of Milestones**

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

## 7 PERFORMANCE INDICATORS

7.1 The Supplier shall:

- (a) provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator; and
- (b) comply with the provisions of Schedule 3 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

### Performance Failures

7.2 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 15 (*Charges and Invoicing*);
- (b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a));
- (c) a PI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- (d) a Material PI Failure occurs:
  - (i) the Supplier shall comply with the Rectification Plan Process; and
  - (ii) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 17.16 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

7.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:

- (a) the KPI Failure:

- (i) breaches the relevant KPI Service Threshold;
- (ii) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
- (iii) results in:
  - (A) the corruption or loss of any Authority Data (in which case the remedies under Clause 26.7 (*Authority Data and Security Requirements*) shall also be available); and/or
  - (B) the Authority being required to make a compensation payment to one or more third parties;
- (b) the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- (c) the Authority is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause 41.1(b) (*Termination by the Authority*).

#### **Unacceptable KPI Failure**

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

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

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

7.5 The Supplier:

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

#### **Critical Performance Failure**

- 7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 41.1 or 41.2 (*Termination by the Authority*).

#### **Changes to Performance Indicators and Service Credits**

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

- (a) change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
- (b) convert one or more:
  - (i) Key Performance Indicators into a Subsidiary Performance Indicator; and/or
  - (ii) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).

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

- (a) the total number of Key Performance Indicators does not exceed 20; and
- (b) the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards.



## **8 SERVICES IMPROVEMENT**

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

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

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

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

## **9 RISK MANAGEMENT**

9.1 The Supplier acknowledges that any risk assessment which has been, or may be, undertaken in connection with the Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the

Parties. The issuing of any risk assessment questionnaire and the process of risk assessment generally, including without limitation, the identification of (or failure to identify):

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

shall not in any way limit or exclude the Supplier's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risks of the Supplier and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accept those risks under the Contract. Any risk assessment questionnaire released was or will be issued by the Authority solely on this basis.

## **10 GFA, EQUIPMENT AND MAINTENANCE**

### **GFA**

- 10.1 On the Commencement Date for the purposes of the work to be undertaken against this Contract, the Authority shall provide to the Supplier, free of charge, the Government Furnished Assets as described in Schedule 35 (*Government Furnished Assets*).
- 10.2 For the Term, the Supplier shall act with due care and diligence in respect of all GFA and shall ensure that all GFA is used in the most efficient manner, avoiding waste where reasonably practicable.
- 10.3 The Parties shall review Schedule 35 (*Government Furnished Assets*) as a minimum annually at the commencement of each Contract Year and shall (following agreement) amend the GFA list as appropriate.

### **Supplier Equipment**

- 10.4 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing,

carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

- 10.5 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 10.6 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target Performance Levels.

#### **Maintenance**

- 10.7 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority's Senior Non-Commercial Manager (as such other representative of the Authority that they may nominate), the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 10.8 The Supplier shall give as much notice as is reasonably practicable to the Authority prior to carrying out any Emergency Maintenance.
- 10.9 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

### **11 ACCESS AND FACILITIES TO BE PROVIDED BY THE SUPPLIER (DEFCON 608 EDN 07/21)**

- 11.1 For the purposes of DEFCON 608:

- (a) reference to the "Contractor" shall be replaced with reference to the "Supplier"; and

- (b) reference to the "Authority's Representatives" shall be replaced with reference to the "Authority".

11.2 The Contractor shall provide to the Authority's Representatives, following reasonable notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to their premises for monitoring the Contractor's progress and quality standards in performing this Contract.

11.3 As far as reasonably practical, the Contractor shall ensure that the provisions of Clause 11.1 are included in their subcontracts with those suppliers identified in this Contract. The Authority, through the Contractor, shall arrange access to such sub-contractor's accommodation/facilities and premises.

## **12 REDUNDANT MATERIEL (DEFCON 601 EDN 04/14)**

12.1 For the purposes of DEFCON 601:

- (a) reference to the "Contractor" shall be replaced with reference to the "Supplier";
- (b) reference to "DEFCON 501 (Definitions)" shall be replaced with reference to "Schedule 1 (*Definitions*)".

12.2 Redundant Materiel shall mean Materiel as defined in DEFCON 501 (Definitions) that is identified as surplus to the requirement of the Contract for whatever reason.

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

- (a) On completion of the Contract or earlier if appropriate, the Contractor shall prepare:
  - (i) a list of those items of the Materiel referred to above which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and

- (ii) a list of those items of the Materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.
- (b) The Contractor shall send the lists referred to in sub-sub-Clause 12.3(a)(i) and 12.3(a)(ii) above to the Commercial Officer named in the Contract.
- (c) Within three months of the date of receipt of the lists, the Authority shall issue disposal instructions to the Contractor. Such disposal instructions shall require that the items of materiel are either:
  - (i) transferred to other subsisting contracts; or
  - (ii) subject to contract, retained by the Contractor for use in the performance of future contracts placed with the Contractor; or
  - (iii) subject to contract, repaired by the Contractor; or
  - (iv) at the direction of the Authority, sold by the Contractor, acting on behalf of the Authority, for the best price reasonably obtainable. Materiel designated in accordance with sub-sub-Clause 12.3(a)(ii) above shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

12.4 The proceeds of the sale of items of Materiel sold pursuant to sub-sub-Clause 12.3(c)(iv) above shall be credited to the Authority in accordance with arrangements made between the Contractor and the Authority.

12.5 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.

### **13 ISSUED PROPERTY (DEFCON 611 EDN 12/22)**

13.1 For the purposes of DEFCON 611:

- (a) reference to the "Contractor" shall be replaced with reference to the "Supplier";

- (b) reference to the "Public Stores Account" or "PSA" shall be replaced with reference to the "inventory"; and
- (c) reference to "Contract Price" shall be replaced with reference to "Charges".

## **General**

- 13.2 All Issued Property shall remain the property of the Authority. It shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.
- 13.3 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 Authority, and the exclusion of any such lien, are brought to the notice of all subcontractors and other persons dealing with any Issued Property.

## **Receipt**

- 13.4 Subject to Clauses 13.5 and 13.8 below, within 14 days of receipt of Issued Property, or such other longer period as may be specified in the Contract, the Contractor shall:
- (a) check the Issued Property to verify that it corresponds with the Issued Property specified in the Contract;
  - (b) conduct a reasonable visual inspection; and
  - (c) conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided;

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

- 13.5 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 13.4 above shall count from the date on which packages are opened.

- 13.6 The Authority shall within a reasonable time after receipt of any notice under Clause 13.4 of this Condition replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority 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.
- 13.7 In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 13.4, 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.
- 13.8 Clauses 13.4 to 13.7 do not apply in the following circumstances:
- (a) where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in the Contract;
  - (b) where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in the Contract; and
  - (c) where Special Jigs and Tools etc. become Issued Property under DEFCON 23.

## **Custody**

- 13.9 Subject to Clause 13.12 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 Authority's instructions or until the expiry of the period specified in Clause 13.15.
- 13.10 The Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in the Contract.
- 13.11 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property.

13.12 The Contractor shall not be liable in respect of:

- (a) defects or deficiencies notified to the Authority in accordance with Clause 13.4 of this Condition or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 13.4 of this Condition;
- (b) 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);
- (c) Issued Property rendered unserviceable as a direct result of ordinary performance of the Contract;
- (d) any loss or damage to Issued Property arising from:
  - (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
  - (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
  - (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof;
  - (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the King's enemies.

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

13.13 The Contractor shall:

- (a) open and maintain Public Store Account (PSA) in accordance with DEF STAN 05-099.
- (b) ensure that all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time;



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

13.14 Once title in Special Jigs, Tools etc has passed to the Authority in accordance with Clause 6 of DEFCON 23 the Contractor shall record that equipment in the PSA in accordance with DEF STAN 05-099.

13.15 At Contract completion the Contractor shall forward a list of Issued Property still held to the Authority'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 Authority at Contract completion. If no disposal instructions are specified in the Contract the Authority shall provide such instructions within two months of the Contractor's written request to do so.

#### **14 ACCOUNTING FOR PROPERTY OF THE AUTHORITY (DEFCON 694 EDN 07/21)**

14.1 For the purposes of DEFCON 694:

- (a) reference to the "Contractor" shall be replaced with reference to the "Supplier";
- (b) reference to the "Public Stores Account" or "PSA" shall be replaced with reference to the "inventory";
- (c) "quarterly" in Clause 13.2(b) shall be replaced with "annually (and when requested to do so by the Authority)";
- (d) reference to DEFCON 611 shall be replaced with reference to "Clause 13 (*DEFCON 611*)"; and
- (e) reference to DEFCON 503 shall be replaced with reference to "Schedule 22 (*Change Control Procedure*)".

14.2 The Contractor shall:

- (a) maintain a Public Store Account (PSA), as defined in DEFSTAN 05-099, which shall include a complete list of all property of the Authority, as defined in Clause 14.3, and record for that property all transactions or other accounting information specified at Annex A to this Condition;
- (b) supply to the Authority quarterly reports on the current inventory 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 Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under the Contract;
- (c) ensure that the PSA is available for inspection by the Authority at any reasonable time;
- (d) on being given two months' notice or any other period as has been stated in the Contract permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority; where the Authority has reasonable grounds to doubt the integrity of the PSA to the extent that the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
- (e) retain the PSA for a period of three years after disposal of the last item of the property of the Authority, or for any other period as may be specified in the Contract;
- (f) if the Authority agrees that a subcontractor at whatever level of subcontracting shall have responsibility in the subcontractor's PSA for property of the Authority issued in aid of the Contract, the Contractor shall include in any subcontract with those subcontractors only the provisions corresponding to those set out in this Condition that apply to property of the Authority issued in aid of the subcontract, in particular Clauses 14.1, 14.3, 14.5 and 14.8; and
- (g) 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 DEFCON 503 within three months of the publication date of the new edition. These amendments shall not have retrospective effect.

- 14.3 For the purposes of this Condition, property of the Authority' means GFA and fixed assets, including property issued under DEFCON 611 and property of the Authority issued to the Contractor under any other authorising document, except for property vested in the Authority under Clause 1 of DEFCON 649.
- 14.4 For the avoidance of doubt, it is a condition of this Contract that this Condition shall apply to all property issued to the Contractor from the date of the Contract, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the date of this Contract may be subject to separate contractual arrangements.
- 14.5 The obligations of the Contractor arising under this Condition in respect of property of the Authority 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 14.2(e).
- 14.6 The obligations of the Contractor arising, under this Condition, in respect of property of the Authority unconnected with the Contract, shall survive completion of the Contract and shall not be completed until all those obligations are fulfilled. Including the provisions of sub-Clause 14.2(e) unless and until a subsequent contract containing DEFCON 694 is placed with the Contractor, at which time obligations, in respect of any remaining property of the Authority, unconnected with the Contract, shall be subsumed in the subsequent contract.
- 14.7 If, after completion of the Contract, no subsequent contract is placed containing DEFCON 694 within the period detailed at sub-Clause 14.2(e), then the obligations of the Contractor arising under this Condition in respect of property of the Authority unconnected with the Contract shall cease on expiry of the period detailed at sub-Clause 14.2(e).
- 14.8 The Authority reserves the right to amend Annex A without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause, Annex A shall be regarded as a Specification and subject to the terms of DEFCON 503. If the Authority exercises this right:
- (a) the Contractor shall implement the amendment to Annex A at the commencement of the Authority's next accounting year provided that a notice of six months or such other period as may expressly be agreed between the Authority and Contractor is given to the Contractor. These amendments shall not have retrospective effect; and

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

## **15 UNIQUE IDENTIFIERS (DEFCON 5J ED 11/18/16)**

15.1 For the purposes of DEFCON 5J:

- (a) reference to the "Contractor" shall be replaced with reference to the "Supplier".

15.2 For the purposes of this Condition, Unique Identifiers comprise the following:

- (a) Unique Order Identifier (UOI) generated by the Contracting, Purchasing & Finance (CP&F) electronic procurement tool for non inventory purchase orders;
- (b) Unique Receipt Reference Identifier (URRI), generated by CP&F for inventory purchase orders; or
- (c) Electronic Business Capability (EBC) Unique Package Identifier (EUPI) generated for EBC contractor logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the Authority and the second part being the identifier generated by the Contractor.

### **Use**

- 15.3 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.
- 15.4 For EBC contractor logistic support contracts, the Contractor will generate EUPIs in fulfilling demands raised under a contractor logistic support contract. A EUPI applies for each package and the Contract must quote it in any communication concerning a package. Where a delivery includes more than one package, each package must have a separate EUPI.

### **Confirmation of Receipt**

- 15.5 Confirmation of receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of DEFCON 525 or any other term of the Contract relating to acceptance by the Authority.

## **16 LEASES**

- 16.1 The Authority shall, subject to Clauses 21 and 22 and the provisions of the Master Lease Agreement set out in Schedule 34, provide the Supplier with access to such parts of the Authority Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.
- 16.2 The Authority shall provide the Supplier with such accommodation and facilities in the Authority Premises as is specified in Schedule 34 or which is otherwise agreed by the Parties from time to time.
- 16.3 Subject to the requirements of Clause 43 (*Consequences of Expiry or Termination*) and Schedule 25 (*Exit Management*), in the event of the expiry or termination of the Contract, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority's Premises to remove any of the Supplier Equipment. All such equipment shall be promptly removed by the Supplier.
- 16.4 The Supplier shall ensure that:
- (a) where using the Authority Premises they are kept properly secure and it will comply and cooperate with the Authority's reasonable directions regarding the security of the same;
  - (b) only those of the Supplier Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so.

## **SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **17 FINANCIAL AND TAXATION MATTERS**

#### **Charges and Invoicing**

- 17.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Charges to the Supplier in

accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 15 (*Charges and Invoicing*).

- 17.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 19 (*Records, Reports, Audits and Open Book Data*), 28 (*Transparency and Freedom of Information*), 29 (*Protection of Personal Data*) and, to the extent specified therein, Clause 37 (*Remedial Adviser*) and Clause 38 (*Step-In Rights*).
- 17.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

#### **VAT**

- 17.4 The Charges are stated exclusive of VAT (or any similar EU (or non-EU taxes) taxes chargeable), which shall be added at the prevailing rate as applicable and paid in accordance with this Clause.
- 17.5 If the Supplier is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Supplier is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Supplier in addition to the Charges (or any other sum due to the Supplier) a sum equal to the output VAT chargeable on the tax value of the supply of Supplier Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- 17.6 The Supplier is responsible for the determination of VAT liability. The Supplier shall consult their Customer Compliance Manager or the HMRC Enquiries Desk (and not the Commercial Officer) in cases of doubt. The Supplier shall notify the Authority's Commercial Officer of the Authority's VAT liability under the Contract, and any changes to it, within twenty business days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Supplier to obtain, and pass to the Authority, a formal opinion from HMRC. The Supplier shall comply promptly with any such requirement. Where the Supplier obtains an opinion from HMRC, they shall supply a copy to the Authority within three business days of receiving that opinion unless they propose to challenge the opinion. Where the Supplier

challenges the opinion they shall supply to the Authority a copy of any final opinions issued by HMRC on completion of the challenge within three business days of receiving the opinion.

- 17.7 Where supply of Supplier Deliverables comes within the scope of UK VAT, but the Supplier is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Supplier Deliverables. The Supplier shall be responsible for ensuring they take into account any changes in VAT law regarding registration.
- 17.8 Where Supplier Deliverables are deemed to be supplied to the Authority outside the UK, the Supplier may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Authority shall pay to the Supplier in addition to the Charges (and any other sum due to the Supplier under the Contract) a sum equal to the tax the Supplier is liable to pay to the tax authorities of the country in question in relation to the Supplier Deliverables within thirty calendar days of a written request for payment of any such sum by the Supplier.
- 17.9 In relation to the Supplier Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Supplier's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Supplier having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Supplier has complied with this requirement the matter shall be resolved under the Dispute Resolution Procedure.
- 17.10 Should HMRC assess that the Supplier has incorrectly determined the VAT liability, in accordance with this Clause, the Authority will pay the VAT assessed by HMRC or the Supplier shall credit any VAT paid by the Authority over and above the HMRC assessment (as applicable). In the event that HMRC so determines, the Supplier shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Supplier shall supply the Authority with a copy of all correspondence between HMRC and the Supplier's advisors regarding the VAT assessment within three business days of a written request from the Authority for such correspondence.
- 17.11 Where the Supplier is a qualifying company or qualifying partnership for the purposes of any UK tax legislation the Supplier shall notify the Authority's Commercial Officer, in writing,

where it has notified HMRC that a return it has delivered to HMRC includes an uncertain amount that relates to a contract it has entered into with the Authority. The Supplier shall notify the Authority within 20 business days of the notification it has provided to HMRC and provide the Authority with a copy of the notification. The Supplier shall continue to keep the Authority informed of any correspondence and/or discussions with HMRC in relation to the uncertain tax treatment within a reasonable time frame or upon request by the Authority.

- 17.12 In the event that HMRC notifies the Supplier of any change to the tax treatment of a previously notified uncertain amount, the Supplier shall notify the Authority and provide a copy of HMRC's notification and assessment within 20 Working Days of receiving such notification and assessment.
- 17.13 The Authority shall not be liable for any interest and/or penalty that the Supplier is required to pay to HMRC for a failure to notify HMRC of an uncertain amount.
- 17.14 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 17.14 shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

#### **Set-off and Withholding**

- 17.15 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.
- 17.16 If the Authority wishes to:
- (a) set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 17.15; or
  - (b) exercise its right pursuant to Clause 7.2(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,



it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

### **Benchmarking**

17.17 The Parties shall comply with the provisions of Schedule 17 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

### **Financial Distress**

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

### **Promoting Tax Compliance**

17.19 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

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

17.20 For the avoidance of doubt, the obligation at Clause 17.19 also applies to an Occasion of Tax Non-Compliance in non-UK jurisdictions. If the Occasion of Tax Non-Compliance occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the Occasion of Tax Non-Compliance and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the Occasion of Tax Non-Compliance.

- 17.21 The duty to notify does not substitute the Supplier's obligations under Schedule 19 (*Financial Reports and Audit Rights*) when used.

## **SECTION D - CONTRACT GOVERNANCE**

### **18 GOVERNANCE**

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

#### **Representatives**

- 18.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 18.3 The initial Supplier Representative shall be the person named as such in Schedule 29 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 21 (*Supplier Personnel*).
- 18.4 The Authority shall notify the Supplier of the identity of the initial Key Personnel within 5 Working Days of the Commencement Date. The Authority may revoke or amend the authority of the Key Personnel or appoint a new or additional Key Personnel at any time and shall notify the Supplier in writing as soon as reasonably practicable.

### **19 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA**

- 19.1 The Supplier shall comply with the provisions of:
- (a) Schedule 24 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
  - (b) Part A of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 19.2 The Parties shall comply with the provisions of:

- (a) Part B of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
- (b) Part C of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

## **20 CHANGE**

### **Change Control Procedure**

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

### **Change in Law**

20.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

20.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 20.2(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
  - (i) whether any Change is required to the Services, the Charges or this Contract; and
  - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- (b) provide the Authority with evidence:

- (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
- (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
- (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

20.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 20.2(b)) shall be implemented in accordance with the Change Control Procedure.

## **SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN**

### **21 SUPPLIER PERSONNEL**

21.1 The Supplier shall:

- (a) ensure that all Supplier Personnel:
  - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
  - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (*Services Description*) and Schedule 5 (*Security Management*); and
  - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 5 (*Security Management*);
- (b) subject to Schedule 28 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;

- (c) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (e) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (f) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (g) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Contract.

21.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:

- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

### **Key Personnel**

21.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 29 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

21.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.

21.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:

- (a) requested to do so by the Authority;
- (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
- (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
- (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

21.6 The Supplier shall:

- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- (e) ensure that any replacement for a Key Role:
  - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
  - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

**Employment Indemnity**

21.7 The Parties agree that:

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

#### **Income Tax and National Insurance Contributions**

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

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

#### **Staff Transfer**

21.9 The Parties agree that Schedule 28 (*Staff Transfer*) will apply to:

- (a) the commencement of the provision of the Services or any part of the Services; and
- (b) the expiry or termination of the Services or any part of the Services.

**11/22)**

22.1 For the purposes of DEFCON 76:

- (a) reference to the "Contractor" shall be replaced with reference to the "Supplier";
- (b) reference to DEFCON 611 shall be replaced with reference to "Clause 13 (*DEFCON 611*)".

22.2 Reference in this Condition to:

- (a) 'Government Establishment' or 'site' shall be deemed to include any of His Majesty's Ships or Vessels and Service Stations;
- (b) 'Officer in Charge' shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Heads of Government Establishments; and
- (c) 'Contractor's Representative(s)' shall be deemed to include the Contractor's employees, agents and subcontractors.

### **General**

22.3 The following general provisions apply:

- (a) 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.
- (b) Any land or premises (including temporary buildings) made available to the Contract by the Authority 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.



- (c) The Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to them prior to entering into the Contract.

#### **Liability In Respect Of Damage To Government Property**

- 22.4 Without prejudice to the provisions of DEFCON 611 (Issued Property) and of DEFCON 612 (Loss of or Damage to the Articles), where those conditions form part of the Contract, the Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the Contractor, or by any of their Representatives, arising from the Contractor's or their Representatives' presence on a Government Establishment in connection with the Contract, provided that this Condition 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 the Contractor's or their Representatives' reasonable control.
- 22.5 The total liability of the Contractor under Clause 22.4 herein shall be subject to any limitation specified in the Contract.

#### **Contractor's Property**

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

#### **Contractor's Representatives**

22.7 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of their 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 Authority may require, including full details of birthplace and parentage of any such Representative who:

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

22.8 The Authority shall issue passes for those Representatives who are approved by it in accordance with Clause 22.7 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 Authority and shall be surrendered on demand or on completion of the work.

22.9 Notwithstanding the provisions of Clauses 22.7 and 22.8 hereof if, in the opinion of the Authority, any Representative of the Contractor shall misconduct themselves, 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.

22.10 The decision of the Authority upon any matter arising under Clauses 22.7 to 22.9 inclusive shall be final and conclusive.

### **Observance Of Regulations**

22.11 The following provisions apply:

- (a) The Contractor shall ensure that their 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.
- (b) Where the Contractor requires information on the Government's Baseline Personnel Security Standard (the Standard) or security clearance for their Representatives or is

not in possession of the relevant rules, regulations or requires guidance on them, they shall apply in the first instance to the Project Manager/Equipment Support Manager.

- (c) On request, the Contractor shall be able to demonstrate to the Authority 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 Authority to inspect the processes being applied by the Contractor to comply with the Standard.
- (d) The Contractor shall comply and shall ensure that their Representatives comply with the rules, regulations and requirements that are in force whilst at that Establishment which shall be provided by the Authority on request.
- (e) When on board ship, compliance with the rules, regulations, and requirements shall be in accordance with the Ship's Regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements shall be provided on request by the Officer in Charge.

### **Transport Overseas**

22.12 Where the Contractor's Representatives are required by the Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Contractor shall make such arrangements through the Project Manager/Equipment Support Manager named for this purpose in the Contract. When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes their Representatives to accompany materiel for installation which they are to arrange to be delivered, the Contractor shall make their own transport arrangements. The Authority shall reimburse the Contractor's costs for such transport of their Representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Contractor's Representatives locally when overseas which is necessary for the purposes of the Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

### **Medical Treatment Overseas**

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

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

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

#### **Dependants Of Contractor's Representatives**

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

#### **Provision Of Funds Overseas**

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

#### **Health And Safety Hazard Control**

22.17 Where the Contractor enters a Government Establishment for the purpose of performing work under the Contract:

(a) The Contractor shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract of:

- (i) any health and safety hazards associated with the work to be performed by them or any of their Representatives;
- (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
- (iii) any precautions to be taken by them as well as any precautions which, in their opinion, ought to be taken by the Authority, in order to control such risks.

(b) The Authority shall notify the Contractor of:

- (i) any health and safety hazards which may be encountered by the Contractor or any of their Representatives on the Government Establishment;
- (ii) any foreseeable risks to the health and safety of the Contractor or any of their Representatives, associated with such hazards; and
- (iii) any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks.

(c) The Contractor shall notify their Representatives of and, where appropriate, provide adequate instruction in relation to:

- (i) the hazards, risks and precautions notified by them to the Authority under sub-Clause 22.17(a));
- (ii) the hazards, risks and precautions notified by the Authority to the Supplier under sub-Clause 22.17(b)); and

- (iii) the precautions which, in their opinion, ought to be taken by their Representatives in order to control those risks.
- (d) The Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract with:
  - (i) copies of those sections of their own and, where appropriate, their Representatives' Safety Policies which are relevant to the risks notified under sub-Clause 22.17(a));
  - (ii) copies of any related risk assessments;
  - (iii) copies of any notifications and instructions issued by them to their Representatives under sub-Clause 22.17(c)).
- (e) The Authority shall provide the Contractor with:
  - (i) copies of those sections of its own Safety Policies which are relevant to the risks notified under sub-Clause 22.17(b));
  - (ii) copies of any related risk assessments;
  - (iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under sub-Clause 22.17(c)).

## **23 SUPPLY CHAIN RIGHTS AND PROTECTIONS**

### **Advertising Sub-contract Opportunities**

- 23.1 Where the Supplier, after the Effective Date, elects to advertise the subject matter of any Sub-contract with a view to appoint one or more Sub-contractor, it shall promptly notify the Authority that it intends to award a Sub-contract.
- 23.2 Clauses 23.4 to 23.6 shall not apply:
- (a) where pursuant to Regulation 37(3) the Authority obliges the Supplier to apply the provisions set out in Part 7 of the Regulations to all sub-contracts which the Supplier

intends to award to third parties in connection with this Contract after the Effective Date;  
or

- (b) in relation to any Sub-contract or Sub-contracts which the Supplier intends to award to any third party or third parties after the Effective Date, where pursuant to Regulation 37(3) the Authority obliges the Supplier to apply the provisions set out in Part 7 of the Regulations to the award of that or those Sub-contract(s).

23.3 Following notification by the Supplier in accordance with Clause 23.1, the Authority may (in its absolute discretion) notify the Supplier in writing that Clauses 23.4 to 23.6 shall not apply and the Supplier shall follow the following procedure:

- (a) the Supplier shall obtain three quotes for the relevant works and/or services; and
- (b) the Parties shall discuss such quotes and shall agree which quote will be accepted based on best value for money.

23.4 Following its notification under Clause 23.1, and subject to Clauses 23.2 and 23.3, where the Supplier has elected to advertise the subject matter of any Sub-contract with a view to appoint one or more Sub-contractor, it shall (unless the Authority otherwise agrees in writing):

- (a) publish an advertisement on (and provide all information required by) the Defence Sourcing Portal in respect of each and any Sub-contract opportunity and shall confirm that any such advertisement has been automatically published on Contracts Finder and Find a Tender;
- (b) within 30 (thirty) days after the date on which such Sub-contract shall have been awarded update the relevant advertisement on the Defence Sourcing 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;
- (c) provide reports to the Authority, 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 Term; and

- (d) promote the Defence Sourcing Portal to its suppliers and encourage those organisations to register on the Defence Sourcing Portal.

23.5 The Authority may issue guidance to the Supplier on how to advertise sub-contract opportunities on the Defence Sourcing Portal from time to time and (where the Supplier elects to advertise the subject matter of any Sub-contract after the Effective Date with the view to appointing one or more Sub-contractors after that date) the Supplier shall comply with such guidance so issued in relation to the advertisement of any Sub-contract pursuant to this Clause.

23.6 Each advert referred to in Clause 23.4 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

23.7 The Supplier shall consult with and accept the Authority's instructions on redaction of any documents to be published on Contracts Finder and Find a Tender. Any decision to redact information made by the Authority shall be final.

#### **Appointment of Sub-contractors**

23.8 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

- (a) manage any Sub-contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Contract in the delivery of the Services; and
- (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.

23.9 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority in writing of:

- (a) the proposed Sub-contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-contractor; and



- (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

23.10 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 23.9, the Supplier shall also provide:

- (a) a copy of the proposed Sub-contract; and
- (b) any further information reasonably requested by the Authority.

23.11 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 23.9 (or, if later, receipt of any further information requested pursuant to Clause 23.10), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 23.27 (*Termination of sub-contracts*);

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

23.12 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
  - (i) the Supplier's notice issued pursuant to Clause 23.9; and
  - (ii) any further information requested by the Authority pursuant to Clause 23.10; and

- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 23.14 (*Appointment of Key Sub-contractors*)),

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

- 23.13 Where the Supplier deems it necessary for any its Sub-contractor (or where requested by the Authority), the Supplier shall procure that such Sub-contractors are certified as compliant with Cyber Essentials PLUS.

#### **Appointment of Key Sub-contractors**

- 23.14 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 23.27 (*Termination of sub-contracts*).

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

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

- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;

- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:
  - (i) data protection requirements set out in Clauses 26 (*Authority Data and Security Requirements*) and 29 (*Protection of Personal Data*);
  - (ii) FOIA requirements set out in Clause 28 (*Transparency and Freedom of Information*);
  - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5(l) (*Services*);
  - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
  - (v) the conduct of Audits set out in Part C of Schedule 19 (*Financial Reports and Audit Rights*);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clause 42 of this Contract;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;

- (h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 37 (*Remedial Adviser*);
- (i) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 38 (*Step-in Rights*);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:

- (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:

- (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or

- (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and

- (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 18 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 4.3(b)(ii) of Schedule 18 (*Financial Distress*).

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

## **Supply chain protection**

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

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
- (b) providing that where the Sub-contractor submits an invoice to the Supplier, requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 23.18(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 23.18(d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) shall take reasonable efforts to reflect Clause 44.10(j) in any subcontract that it enters into to satisfy the requirements of the Contract and to require its subcontractors to reflect Clause 44.10(j) in their subcontracts that they enter into to satisfy the requirements of this Contract;
- (f) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (g) requiring the Sub-contractor to include a clause to the same effect as this Clause 23.18 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

23.19 The Supplier shall take reasonable endeavours to ensure that all Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into before the

Effective Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 23.19(b) the invoice shall be regarded as valid and undisputed for the purpose of Clause 23.19(d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 23.19 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

23.20 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause 23.20(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

23.21 Without prejudice to Clause 23.20(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
  - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
  - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause 23.21(a), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

23.22 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within thirty (30) days of receipt, the Supplier shall provide to the Authority in writing within 30 Working Days of submission of the latest Balanced Scorecard Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

- (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within thirty (30) days of receipt;
- (b) actions to address each of the causes set out in Clause 23.22(a) and
- (c) mechanism for and commitment to regular reporting on progress to the Supplier's Board.

23.23 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is provided to the Authority in writing.

23.24 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected

Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.

- 23.25 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier Solution (to the extent it is not already included).
- 23.26 Notwithstanding any provision of Clauses 27 (*Confidentiality*) and 30 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

#### **Termination of Sub-contracts**

23.27 The Authority may require the Supplier to terminate:

- (a) a Sub-contract where:
  - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 41.1(b) (*Termination by the Authority*);
  - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
  - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or



- (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 23.31; and
- (b) a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
  - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

### **Competitive Terms**

- 23.28 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item.
- 23.29 If the Authority exercises its options pursuant to Clause 23.28, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

### **Retention of Legal Obligations**

- 23.30 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 23.30, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

### **Exclusion of Sub-contractors**

23.31 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

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

### **Reporting SME/VCSE Sub-contracts**

23.32 In addition to any other Management Information requirements set out in this Contract, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to the Authority thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in Annex 3 of Schedule 24 (*Reports and Records Provisions*) and in accordance with any guidance issued by the Authority from time to time.

23.33 The Authority may issue from time to time guidance to the Supplier in relation to the completion of Supply Chain Transparency Information Template. The Supplier shall not unreasonably refuse to comply with any guidance issued when complying with Supply Chain Transparency Information Template and Clauses 23.32 to 23.36.

23.34 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice in writing and specifying the date from which it must be used. The changes may include data required or format of the report or both. The parties agree that no such change shall constitute a formal amendment of the Contract.

23.35 Where the Supplier is reasonably likely to incur additional costs arising from any change to Supply Chain Transparency Information Template notified in accordance with 23.34, the Supplier shall notify the Authority to such effect providing at the same time a Change Request. The Parties shall then agree any Contract Change in accordance with Schedule 22 (*Change Control Procedure*).

23.36 Notwithstanding the requirements of Schedule 24, the Supplier shall retain the information identified in Annex 4 of Schedule 24 (*Reports and Records Provisions*) and supporting records for a period of 24 (twenty-four) months commencing on the date of their provision pursuant to Annex 4 of Schedule 24 (*Reports and Records Provisions*).

## **SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

### **24 INTELLECTUAL PROPERTY RIGHTS**

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

### **25 IPRS INDEMNITY**

25.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

25.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
  - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
  - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.

25.3 If the Supplier elects to procure a licence in accordance with Clause 25.2(a) or to modify or replace an item pursuant to Clause 25.2(b), but this has not avoided or resolved the IPRs Claim, then:

- (a) the Authority may terminate this Contract (if subsisting) with immediate effect by written notice to the Supplier; and
- (b) without prejudice to the indemnity set out in Clause 25.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

## **26 AUTHORITY DATA AND SECURITY REQUIREMENTS**

26.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

26.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

26.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (*Services Description*).

26.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

26.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).

26.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.

- 26.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
  - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*).
- 26.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 26.9 The Supplier shall comply with the requirements of Schedule 5 (*Security Management*).
- 26.10 The Authority shall notify the Supplier of any changes or proposed changes to Schedule 5 (*Security Management*).
- 26.11 If the Supplier believes that a change or proposed change to Schedule 5 (*Security Management*) will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 26.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 26.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

## 27 CONFIDENTIALITY

- 27.1 For the purposes of this Clause 27, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 27.2 Except to the extent set out in this Clause 27 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent, which consent shall not unreasonably be withheld;
  - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract;
  - (d) not copy any of the Disclosing Party's Confidential Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract; and
  - (e) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 27.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 28 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
  - (b) the need for such disclosure arises out of or in connection with:

- (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
  - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
  - (iii) the conduct of a Central Government Body review in respect of this Contract;
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
- (d) the Recipient has the right to use or disclose the Confidential Information in accordance with other clauses of the Contract provided the relationship to any other Confidential Information is not revealed.

27.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall ensure that the recipient of the Confidential 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.

27.5 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

27.6 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract, only to the extent necessary for the performance of the Contract;

- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 27.6, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

27.7 The Supplier shall ensure that their employees are aware of their arrangements for discharging the obligations in this Clause before they receive Confidential Information and take such steps as may be reasonably practical to enforce such arrangements.

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

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 27.8(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 38 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 37 (*Remedial Adviser*) and Exit Management rights; or



- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 27.

27.9 Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 27.8(c) or 27.8(d) above, the Authority will endeavour to provide the Supplier with 3 Working Days' notice in advance of such disclosure. In relation to a disclosure of Information made under Clause 27.8(c) above, if reasonably requested by the Supplier within 2 Working Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Confidential Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Clause.

27.10 Before sharing any Information in accordance with Clause 27.8 above, the Authority may redact the Confidential Information. Any decision to redact information made by the Authority shall be final.

27.11 Nothing in this Clause 27 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

27.12 Nothing in this Clause shall affect the parties' obligations of confidentiality where information is disclosed orally in confidence.

## **28 TRANSPARENCY AND FREEDOM OF INFORMATION**

28.1 The Parties acknowledge that:

- (a) the Transparency Reports;
- (b) the content of this Contract, including any changes to this Contract agreed from time to time, except for:

- (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
  - (ii) Commercially Sensitive Information; and
- (c) the Publishable Performance Information

(together the "**Transparency Information**") are not Confidential Information.

- 28.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 28.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 24 (*Reports and Records Provisions*).
- 28.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 28.5 The Authority shall publish and maintain an up-to-date version of the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 28.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under Section 12 of the FOIA. The Authority may disclose such

information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 27.8(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

28.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

28.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

## **29 PROTECTION OF PERSONAL DATA**

### **Status of the Parties**

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

- (a) "**Controller**" (where the other Party acts as the "**Processor**");
- (b) "**Processor**" (where the other Party acts as the "**Controller**");
- (c) "**Joint Controller**";
- (d) "**Independent Controller**";

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

29.2 Each Party undertakes to comply with its legal obligations under the Data Protection Legislation in accordance with the relevant role which it is performing.

29.3 Notwithstanding Clause 29.2 the Parties agree that:

- (a) the Authority and the Supplier shall each be liable for any breach of the obligations incumbent on them save that neither Party may under any circumstances be held liable for a breach committed by the other Party unless they are, by virtue of their roles as Joint Controllers pursuant to Schedule 31 (*Data Protection*), joint and severally liable for data protection breaches pursuant to Article 26 of the UK GDPR;
- (b) the Supplier shall process the Personal Data for the purposes of:
  - (i) fulfilling its obligations under this Contract or any other written instruction given during the Term by the Authority pursuant to the terms of this Clause 29; or
  - (ii) in order to comply with an obligation imposed upon it under applicable Law,(together the **Agreed Purposes**).
- (c) The Supplier undertakes not to:

- (i) process or otherwise use the Personal Data for any purpose other than for the Agreed Purposes;
  - (ii) disseminate, communicate, sell, assign, licence or provide the Personal Data in any way whatsoever to third parties other than for the Agreed Purposes;
  - (iii) turn the Personal Data, by itself or by a third party acting on its behalf and/or for its account, into a commercial operation other than for the Agreed Purposes;
  - (iv) only process the minimum Personal Data necessary in order to comply with its obligations under this Contract in accordance with the Agreed Purposes (which shall include sharing with third parties).
- (d) The Parties agree to complete and maintain the relevant Paragraph of Part A of Schedule 31 (*Data Protection*) during the Term which shall form part of the Services Description of the Contract. The Authority may from time to time, by written notice to the Supplier, make such amendments to Part A of Schedule 31 as the Authority reasonably considers necessary to meet the requirements of the Data Protection Legislation and the Processor Clauses and/or the Independent Controller Clauses and/or the Joint Controller Agreement shall apply (as applicable) notwithstanding any error or omission in Part A, of Schedule 31 (*Data Protection*).

#### **Where the Authority is the Controller and the Supplier is Processor**

- 29.4 These Clauses 29.4 to 29.17 (the "**Processor Clauses**") shall apply when the Authority is, for the purposes of the Data Protection Legislation, acting as the Controller and the Supplier is the Processor of the Personal Data in accordance with Part A, Paragraph 2 of Schedule 31 (*Data Protection*).
- 29.5 Subject to Clause 29.3, the only processing that the Supplier is authorised to do is contained in these Processor Clauses and Part A, Paragraph 2 of Schedule 31 (*Data Protection*) by the Authority and may not be determined by the Supplier.
- 29.6 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

29.7 The Supplier shall, at the Supplier's cost, provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing and shall continue to provide reasonable assistance to the Authority to ensure that any such Data Protection Impact Assessment is maintained throughout the duration of this Contract. Such assistance may, at the discretion of the Authority, include:

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

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

- (a) process that Personal Data on the documented instructions of the Authority as contained under Part A of Schedule 31 (*Data Protection*) and this Contract, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall immediately notify the Authority before processing the Personal Data unless prohibited by Law on important grounds of public interest;
- (b) notwithstanding any other provisions in this Contract relating to (amongst others) cybersecurity, ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 26 (*Authority Data and Security Requirements*), which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject. In the event of the Authority reasonably rejecting Protective Measures put in place by the Supplier, the Supplier must propose alternative Protective Measures to the satisfaction of the Authority. Failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures. Protective Measures must take account of the:
  - (i) nature of the data to be protected;

- (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
  - (i) the Supplier Personnel do not process Personal Data except in accordance with this Contract (and in particular these Processor Clauses);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Supplier 's duties under this Clause, Clauses 27 (*Confidentiality*) and 26 (*Authority Data and Security Requirements*);
    - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) at the written direction of the Authority, Personal Data (and any copies of it) is deleted or returned to the Authority on termination of the Contract unless the Processor is required by Law to retain the Personal Data and the Supplier has, on the Authority's request, provided a written certificate signed by an officer of the Supplier confirming the Supplier's compliance with this Clause 29.8(d); and
- (e) it complies with Clause 29.32 under this Contract.

29.9 Subject to Clause 29.10, the Supplier shall notify the Authority immediately if it:

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

29.10 The Supplier 's obligation to notify under Clause 29.9 shall include the provision of further information to the Authority in phases, as details become available.

29.11 Taking into account the nature of the processing, the Supplier shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 29.8(e) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

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



by the Authority with the Information Commissioner's Office or any other regulatory authority.

- 29.12 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 29.
- 29.13 The Supplier shall allow for audits of its Data processing activity by the Authority or the Authority 's designated auditor.
- 29.14 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 29.15 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Supplier must:
- (a) notify the Authority in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Authority;
  - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in these Processor Clauses such that they apply to the Sub-processor; and
  - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 29.16 The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 29.17 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause 29 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 29.18 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**Where the Parties are Joint Controllers of Personal Data**

29.19 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement clauses that are necessary to comply with Article 26 of the UK GDPR in accordance with the Joint Controller Agreement as set out in Part B of Schedule 31 (*Data Protection*) and as recorded under Part A, Paragraph 2 of Schedule 31.

**Where the Parties are Independent Controllers of Personal Data**

29.20 With respect to Personal Data provided by one Party ("**Data Discloser**") to another Party ("**Data Recipient**") for which each Party acts as Controller but which is not under the joint control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as an Independent Controller and these Clauses 29.20 to 29.31 (the "**Independent Controller Clauses**") including Part A, Paragraph 3 of Schedule 31 (*Data Protection*) shall apply.

29.21 Notwithstanding the general application of these Independent Controller Clauses, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with these Independent Controller Clauses. Each Party shall process the Personal Data for the Agreed Purposes in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

29.22 Where a Data Discloser has provided Personal Data to a Data Recipient in accordance with Clause 29.20, the Data Recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the Data Discloser may reasonably require.

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

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

- (a) to the extent necessary to perform the respective obligations under this Contract in accordance with the Agreed Purposes;
- (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects in accordance with Clause 29.23);

- (c) where it has recorded it in Part A, Paragraph 3 of Schedule 31 (*Data Protection*);
- (d) which is accurate and in a manner which ensures compatibility with the other Party's systems;
- (e) in compliance with Clause 29.32 under this Contract.

29.25 Upon receiving the Personal Data from the Data Discloser, the Data Recipient shall:

- (a) ensure that the Personal Data is only processed fairly and lawfully and in accordance with these Independent Controller Clauses;
- (b) ensure it has legitimate grounds under the Data Protection Legislation for the processing of Personal Data;
- (c) only carry out processing of the Personal Data for such purposes as are required to fulfil the Agreed Purposes and in accordance with the documented policies as agreed with the Authority;
- (d) not disclose the Personal Data to any other person (including any Sub-processors) save in accordance with this Contract and shall not disclose excessive or irrelevant Personal Data;
- (e) promptly notify the Data provider of any requests, notices or other communications from Data Subjects or any law enforcement agency, the Information Commissioner's Office or any other regulatory authority;
- (f) rectify, erase or block Personal Data upon the directions of the Data provider in accordance with the Data Protection Legislation; and
- (g) ensure it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel (where the Data Recipient is the Supplier) and any employees, servants or agents of the Authority (where the Data Recipient is the Authority) who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Data Recipient's duties under this Clause, Clauses 27 (*Confidentiality*) and 26 (*Authority Data and Security Requirements*) and 28 (*Transparency and Freedom of Information*);

- (ii) are subject to appropriate confidentiality undertakings;
- (iii) 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 Authority or as otherwise permitted by this Contract; and
- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.

29.26 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects, each Party shall, with respect to its processing of Personal Data as Independent Controller, implement and maintain Protective Measures which are appropriate to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the Protective Measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR and protect against a Data Loss Event.

29.27 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.

29.28 Where the Data Recipient receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the Data Discloser pursuant to this Contract:

- (a) the Data Discloser shall provide any information and/or assistance as reasonably requested by the Data Recipient, at its own cost, to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation; or
- (b) where the request or correspondence is directed to the Data Discloser and/or relates to the Data Discloser's processing of the Personal Data, the Data Recipient will:
  - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the Data Discloser that it has received

the same and shall forward such request or correspondence to the Data Discloser; and

- (ii) provide any information and/or assistance as reasonably requested by the Data Discloser to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

29.29 The Parties shall each comply with its obligation to report a Personal Data Breach to the Information Commissioner's Office or any other regulatory authority and (where applicable) Data Subjects under the Data Protection Legislation.

29.30 Notwithstanding Clause 29.29, the Data Recipient shall, at its own expense, notify the Data Discloser without undue delay, and in any event within 24 hours of becoming aware of any actual or suspected Data Loss Event under this Contract irrespective of whether there is a requirement to notify the Information Commissioner's Office or any other regulatory authority or Data Subject(s) and shall:

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

29.31 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified under Part A of Schedule 31 (*Data Protection*).

**International Data Transfers:**

29.32 The Supplier shall not under any circumstances be permitted to transfer, process or otherwise make available any Personal Data processed under this Contract outside of the UK and/or Gibraltar.

### **30 PUBLICITY AND BRANDING**

30.1 The Supplier shall not:

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

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

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

### **31 SHARED DATA ENVIRONMENT**

31.1 The Supplier shall comply with the terms of Schedule 33 (*Shared Data Environment*) only when requested to so by the Authority in writing and in relation to the data specified by the Authority in its written request.

## **SECTION G - LIABILITY, INDEMNITIES AND INSURANCE**

### **32 LIMITATIONS ON LIABILITY**

#### **Definitions**

32.1 In this Clause 32, the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Charges” means any of the charges for the provision of the Services, Supplier Deliverables and the performance of any of the Supplier’s other obligations under this Contract, as determined in accordance with this Contract;

“Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

- 1) UK GDPR;
- 2) DPA 2018; and
- 3) 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;

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

"DPA 2018" means the Data Protection Act 2018;

“Law” means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Service Credits” means the amount that the Supplier shall credit or pay to the Authority in the event of a failure by the Supplier to meet the agreed Service Levels as set out in Clause 7 (*Performance Indicators*), Schedule 3 (*Performance Levels*) and Schedule 15 (*Charges and Invoicing*);

“Term” means the period commencing on the Effective Date and ending on 30 September 2030 or on earlier termination of this Contract;

"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.

### **Unlimited liabilities**

32.2 Neither Party limits its liability for:

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

32.3 The financial caps on liability set out in Clauses 32.4 and 32.5 below shall not apply to the following:

- (a) for any indemnity given by the Supplier to the Authority under this Contract, including but not limited to:
  - (i) the Supplier's indemnity in relation to Clause 25 (*IPRs Indemnity*) and Schedule 32 (*Intellectual Property Rights*);
  - (ii) the Supplier's indemnity in relation to TUPE at Schedule 28 (*Staff Transfer*);
- (b) for any indemnity given by the Authority to the Supplier under this Contract, including but not limited to the Authority's indemnity in relation to TUPE under Schedule 28 (*Staff Transfer*);
- (c) breach by the Supplier of Clause 29 (*Protection of Personal Data*), Schedule 31 (*Data Protection*) and Data Protection Legislation; and



- (d) to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

### **Financial limits**

32.4 Subject to Clauses 32.2 and 32.3 and to the maximum extent permitted by Law:

- (a) throughout the Term the Supplier's total liability in respect of losses that are caused by Defaults of the Supplier shall in no event exceed:
  - (i) in respect of Clause 22 (*DEFCON 76 – Contractor's Personnel at Government Establishments*) ten million pounds (£10,000,000) in aggregate;
  - (ii) in respect of any Supplier Termination Event twenty million pounds (£20,000,000) in aggregate; and
  - (iii) in respect of Clause 13 (*DEFCON 611 – Issued Property*) five million pounds (£5,000,000) in aggregate.
- (b) without limiting Clause 32.4(a) and subject always to Clauses 32.2, 32.3 and 32.4(c), the Supplier's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with Clause 7 (*Performance Indicators*), Schedule 3 (*Performance Levels*) and Schedule 15 (*Charges and Invoicing*), whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be twenty million pounds (£20,000,000) in aggregate;
- (c) on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Supplier's total liability (in aggregate) set out in Clauses 32.4(a) and 32.4(b) above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 32.4(a) and 32.4(b) of this Contract.

32.5 Subject to Clauses 32.2, 32.3 and 32.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall

in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

- 32.6 Clause 32.5 shall not exclude or limit the Supplier's right under this Contract to claim for the Charges.

**Consequential loss**

- 32.7 Subject to Clauses 32.2, 32.3 and 32.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

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

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

- 32.8 The provisions of Clause 32.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and administrative costs and expenses arising from the Supplier's Default, including any costs paid or payable by the Authority:
  - (i) to any third party;

- (ii) for putting in place workarounds for the Supplier Deliverables and other deliverables that are reliant on the Supplier Deliverables; and
  - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any or all wasted expenditure and losses incurred by the Authority arising from the Supplier's Default, including wasted management time;
- (c) the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Charges that would have been payable for the relevant Supplier Deliverables);
- (d) any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- (e) damage to the Authority's physical property and tangible assets, including damage under Clauses 22 (*DEFCON 76*) and 13 (*DEFCON 611*).
- (f) costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- (g) any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- (h) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- (i) any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Supplier pursuant to this Contract.

## **Invalidity**

32.9 If any limitation or provision contained or expressly referred to in this Clause 32 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 32.

## **Third party claims or losses**

32.10 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under Clause 25 (*IPRs Indemnity*) and Schedule 32 (*Intellectual Property Rights*) or at Law), the Authority shall be entitled to make a claim under this Contract against the Supplier in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

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

## **No double recovery**

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

## **33 CONDUCT OF INDEMNITY CLAIMS**

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

## 34 INSURANCE

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

## SECTION H - REMEDIES AND RELIEF

## 35 RECTIFICATION PLAN PROCESS

- 35.1 In the event that:

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

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

### **Notification**

- 35.2 If:

- (a) the Supplier notifies the Authority pursuant to Clause 35.1 that a Notifiable Default has occurred; or

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

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

35.3 The "**Rectification Plan Process**" shall be as set out in Clauses 35.4 (*Submission of the draft Rectification Plan*) to 25.9 (*Agreement of the Rectification Plan*).

#### **Submission of the draft Rectification Plan**

35.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 35.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

35.5 The draft Rectification Plan shall set out:

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

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

#### **Agreement of the Rectification Plan**

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

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

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

35.9 If the Authority consents to the Rectification Plan:

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

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

## **36 DELAY PAYMENTS**

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

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

- (a) the Authority is entitled to or does terminate this Contract pursuant to Clause 41.1(b) (*Termination by the Authority*); or
- (b) the Delay exceeds the Delay Deduction Period.

### 37 REMEDIAL ADVISER

#### 37.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,
- (c) (each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:
- (d) a meeting between the Authority and the Supplier to discuss the Intervention Cause; and/or
- (e) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 37.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 37.1 prior to or instead of exercising its right to terminate this Contract.

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

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



- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
- (c) any right of the Authority to terminate this Contract pursuant to Clause 41.1(b) (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the "**Intervention Period**").

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

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

37.4 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;

- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

37.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 37.

37.6 If:

- (a) the Supplier:
  - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
  - (ii) is in Default of any of its obligations under Clause 37.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Contract pursuant to Clause 41.1(b) (*Termination by the Authority*).

## 38 STEP-IN RIGHTS

38.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 38 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 27 (*Confidentiality*)). The Step-In Notice shall set out the following:

- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
- (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Authority will require access to the Supplier's premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

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

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and

- (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 38.

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

- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
- (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 38.4 shall apply to Deductions from Charges in respect of other Services; and
- (c) the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.

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

- (a) the degradation of any Services not subject to the Required Action; or
- (b) the non-Achievement of a Milestone,
- (c) beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

38.5 Before ceasing to exercise its step in rights under this Clause 38 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:

- (a) the Required Action it has actually taken; and
- (b) the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 38.6.

38.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action

the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

38.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

38.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 38, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
- (b) limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

### **39 AUTHORITY CAUSE**

39.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:

- (a) Achieve a Milestone by its Milestone Date;
- (b) provide the Operational Services in accordance with the Target Performance Levels; and/or
- (c) comply with its obligations under this Contract,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 39):

- (i) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
  - (A) to terminate this Contract pursuant to Clause 41.1(b) (*Termination by the Authority*); or
  - (B) to take action pursuant to Clauses 37 (*Remedial Adviser*) or 38 (*Step-In Rights*);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
  - (B) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
  - (C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and
  - (D) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 15 (*Charges and Invoicing*); and/or
- (iv) where the Supplier Non-Performance constitutes a Performance Failure:
  - (A) the Supplier shall not be liable to accrue Service Credits;

- (B) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
- (C) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*); and
- (D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.

39.2 In order to claim any of the rights and/or relief referred to in Clause 39.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

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

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

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

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

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

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

39.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 39 shall be implemented in accordance with the Change Control Procedure.

#### **40 FORCE MAJEURE**

40.1 Subject to the remaining provisions of this Clause 40 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 40 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

40.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

40.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 40 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated, but the Supplier has failed to do so;
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or



- (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).

40.4 Subject to Clause 40.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

40.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

40.6 Where, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

- (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 41.1(c) (*Termination by the Authority*) or Clause 41.3(b) (*Termination by the Supplier*); and
- (ii) neither Party shall be liable for any Default arising as a result of such failure;

- (b) the Supplier fails to perform its obligations in accordance with this Contract:

- (i) the Authority shall not be entitled:
  - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 37 (*Remedial Adviser*) and/or Clause 38 (*Step-in Rights*) as a result of such failure;

- (B) to receive Delay Payments pursuant to Clause 36 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
- (C) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
- (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

40.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

40.8 Relief from liability for the Affected Party under this Clause 40 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 40.7.

## **SECTION I - TERMINATION AND EXIT MANAGEMENT**

### **41 TERMINATION RIGHTS**

#### **Termination by the Authority**

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

- (a) for convenience at any time in accordance with Clause 42;
- (b) if a Supplier Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days;  
or

- (d) if the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

41.2 Where the Authority:

- (a) is terminating this Contract under Clause 41.1(b) due to the occurrence of either limb (b) (h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Contract under Clause 41.1(b) or Clause 41.1(c), it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

**Termination by the Supplier**

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

- (a) this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 41.3(b) would result in a Partial Termination, the provisions of Clause 41.4 (*Partial Termination*) shall apply.

**Partial Termination**

41.4 If the Supplier notifies the Authority pursuant to Clause 41.3(b) (*Termination by the Supplier*) that it intends to terminate this Contract in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 41.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

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

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

## **42 TERMINATION FOR CONVENIENCE (DEFCON 656B EDN 08/16)**

42.1 For the purposes of DEFCON 656B:

- (a) reference to the "Contractor" shall be replaced with reference to the "Supplier"; and
- (b) reference to "business days" shall be replaced with reference to "Working Days".

42.2 The Authority 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 Authority 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.

42.3 Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

- (a) not start work on any element of the Contractor Deliverables not yet started;
- (b) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
- (c) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
- (d) terminate on the best possible terms any sub-contracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under sub-Clauses 42.3(b) to 42.3(c) of this Clause.

42.4 Where this Condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under Clause 42.3):

- (a) the Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
  - (i) in the possession of the Contractor at the date of termination; and
  - (ii) provided by or supplied to the Contractor for the performance of the Contract,

except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

- (b) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
  - (i) all such unused and undamaged materiel; and

(ii) Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

(c) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

42.5 The Authority shall (subject to Clause 42.6 below and to the Contractor's compliance with any direction given by the Authority in Clause 42.3 above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:

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

42.6 The Authority's total liability under the provisions of this Condition 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.

42.7 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 42.1 to 42.6 except that:

- (a) the name of the Contractor shall be substituted for the Authority except in sub-Clause 42.4(a);
- (b) the notice period for termination shall be as specified in the sub-contract, or if no period is specified 20 (twenty) business days; and
- (c) the Contractor's right to terminate shall be restricted by including the following additional clause "Provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of DEFCON 656B".

- 42.8 Claims for payment under this Condition shall be submitted in accordance with the Authority's direction.

## **43 CONSEQUENCES OF EXPIRY OR TERMINATION**

### **General Provisions on Expiry or Termination**

- 43.1 The provisions of Clauses 5.8 (*Specially Written Software warranty*), 17.4 to 17.14 (VAT), 17.15 and 17.16 (*Set-off and Withholding*), 19 (*Records, Reports, Audits and Open Book Data*), 21.7 (*Employment Indemnity*), 21.8 (*Income Tax and National Insurance Contributions*), 24 (*Intellectual Property Rights*), 25.1 (*IPRs Indemnity*), 27 (*Confidentiality*), 28 (*Transparency and Freedom of Information*), 29 (*Protection of Personal Data*), 32 (*Limitations on Liability*), 43 (*Consequences of Expiry or Termination*), 51 (*Severance*), 53 (*Entire Contract*), 54 (*Third Party Rights*), 56 (*Disputes*) and 57 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 15 (*Charges and Invoicing*), 16 (*Payments on Termination*), 19 (*Financial Reports and Audit Rights*), 23 (*Dispute Resolution Procedure*), 24 (*Reports and Records Provisions*), 25 (*Exit Management*), and 28 (*Staff Transfer*), and 32 (*Intellectual Property Rights*) shall survive the termination or expiry of this Contract.

### **Exit Management**

- 43.2 The Parties shall comply with the provisions of Schedule 25 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.
- 43.3 Upon the expiry of the Contract the Supplier agrees to co-operate with the Authority to such extent as they may be reasonably required to do so for a period of up to 2 years from the date of expiry, such period to be determined by the Authority, to ensure an orderly and efficient transition from the management by the Supplier to management by the Authority or some other person.
- 43.4 The Authority and the Supplier shall agree a fair and reasonable price for satisfying the provisions of Clauses 43.2 and 43.3.

### **Termination in accordance with DEFCONs**

43.5 Where the Authority terminates for convenience, the Parties shall comply with their obligations in relation to the consequences of termination as set out in Clause 42 (*Termination for Convenience*) above.

#### **Payments by the Authority**

43.6 If this Contract is terminated by the Supplier pursuant to Clause 41.3(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Contract):

- (a) the Termination Payment; and
- (b) the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days, the period from (and including) the date of the non-payment by the Authority referred to in Clause 41.3(a) (*Termination by the Supplier*) to (and including) the Termination Date.

43.7 Subject to Clause 43.8, if this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses 41.1(b), 41.1(c) and/or 41.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 25 (*Exit Management*); and
- (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

43.8 If this Contract is terminated (in whole or in party) by the Authority pursuant to Clause 41.1(b) due to the occurrence of limb (k) of the definition of Supplier Termination Event, the Supplier shall not be entitled to any compensation from the Authority.

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

- (a) either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses 41.1(c) or 41.2(b) (*Termination by the Authority*) or 41.3(b) (*Termination by the Supplier*); or



- (b) the Authority terminates this Contract under Clause 41.1(d) (*Termination by the Authority*).

### **Payments by the Supplier**

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

43.11 If this Contract is terminated (in whole or in part) by the Authority pursuant to Clause 41.1(b) due to the occurrence of limb (f)(iii) of the definition of Supplier Termination Event, the Authority shall be entitled:

- (a) to recover from the Supplier the amount of any loss resulting from the termination;
- (b) to recover from the Supplier the amount or value of any such gift, consideration or commission; and
- (c) to recover from the Supplier any other loss sustained in consequence of any breach of Clause 50, where the Contract has not been terminated.

For the avoidance of doubt, recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Supplier pursuant to this Clause 43.11.

43.12 If this Contract is terminated (in whole or in part) by the Authority pursuant to Clause 41.1(b) due to the occurrence of limb (g) or (h) of the definition of Supplier Termination Event, the Authority shall be entitled recover from the Supplier:

- (a) the amount of any loss resulting from the termination; and
- (b) any other loss sustained in consequence of any breach of Clauses 3.2(i) and/or 17.19, where the Contract has not been terminated.

43.13 If this Contract is terminated (in whole or in part) by the Authority pursuant to Clause 41.1(b) (*Termination by the Authority*) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment**

**Notice**") require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

43.14 A Milestone Adjustment Payment Notice shall specify:

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

and may form part of a Termination Notice.

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

- (a) notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
- (b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;
- (c) provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
  - (i) all relevant Milestone Payments; and
  - (ii) the Allowable Price of each Retained Deliverable; and

- (d) provide the Authority with such supporting information as the Authority may require.

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

43.17 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 43.13:

- (a) the Authority shall:

- (i) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and

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

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

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

## **SECTION J - MISCELLANEOUS AND GOVERNING LAW**

### **44 COMPLIANCE**

#### **Health and Safety**

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

- (a) all applicable Law regarding health and safety; and

(b) the Health and Safety Policy whilst at the Authority Premises.

44.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage and prevent any such material health and safety hazards.

44.3 The Supplier shall notify the Authority where it is found guilty, pleads guilty or has an enforcement order made against them in relation to health and safety issue, event or occurrence. This shall be considered a material Default for the purposes of a Supplier Termination Event.

44.4 The Supplier shall flow down the requirement in Clause 44.3 in any contract it has with any Sub-contractor. Where the Supplier becomes aware that any of its Sub-contractors have breached this provision, the Supplier shall find an alternative sub-contractor and shall terminate the contract with such Sub-contractor.

### **Employment Law**

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

### **Equality and Diversity**

44.6 The Supplier shall:

- (a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, marital status (including civil partnerships), age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and

- (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);
- (c) take all reasonable efforts to secure the observance 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; and
- (d) take efforts to reflect this Clause in any subcontract 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.

#### **Official Secrets Act and Finance Act**

44.7 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

#### **Conflicts of Interest**

44.8 The Supplier:

- (a) must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.
- (b) must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

44.9 The Authority will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Authority, such measures do not or will not resolve an actual or potential

Conflict of Interest, the Authority may terminate this Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

### **Modern Slavery**

#### **44.10 The Supplier:**

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

- (i) shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;
- (j) shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed and shall not use or allow child or slave labour to be used by its sub-contractors;
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority and the Modern Slavery Helpline;
- (l) shall comply with any request by the Authority to complete the Modern Slavery Assessment Tool within sixty (60) days of such request;
- (m) shall, if the Supplier or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the guidance Tackling Modern Slavery in Government Supply Chains, which can be found at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/830150/September\\_2019\\_Modern\\_Slavery\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf)

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

- (n) shall comply with any request by the Authority to provide a Supply Chain Map within fourteen (14) days of such request;
- (o) shall comply with any request by the Authority to provide a copy of any reports of any sub-contractor regarding any or all of workforce conditions, working or employment practices and recruitment practices within fourteen (14) days of such request;
- (p) shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied; and

- (q) shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its operations and supply chains to the Authority and relevant national or local law enforcement agencies.

44.11 The following shall be added to the definition of "Audit" in Paragraph 1.1 of Schedule 19 (*Financial Reports and Audit Rights*) immediately after limb (t):

"u. To carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier Personnel in a confidential manner and in the native language of such Supplier Personnel in respect of workforce conditions, working or employment practices and recruitment practices."

44.12 For the purposes of an audit carried out pursuant to limb (u) of the definition of "Audit", in addition to any other rights under the Contract, the Authority may instruct the Supplier to carry out such an audit of any Sub-contractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Authority within ninety (90) days of such instruction.

44.13 If the Supplier notifies the Authority pursuant to Clause 44.15 it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

44.14 If the Supplier is in Default under Clause 44.10 the Authority may by notice:

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

### **Whistleblowing**

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

- (a) Law;



(b) Clauses 44.1 to 44.10 or 44.16; or

(c) Clause 50.

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

#### **45 EMERGENCIES, PERIODS OF TENSION, TRANSITION TO WAR AND HOSTILITIES**

45.1 The Supplier shall continue to provide the Services required in peace, during periods of tension, in transition to war and during hostilities (excluding acts of war) unless directed otherwise by the Authority. The Supplier shall also provide any additional support required in the event that the Authority is directed to respond to any national or international emergency, disaster or other unforeseen task. The Authority shall advise the Supplier of any necessary amendment to the Contract and will negotiate a suitable adjustment to its terms and clauses in accordance with the procedure set out in Schedule 22 (*Change Control Procedure*).

#### **46 CHANGE OF CONTROL OF CONTRACTOR (DEFCON 566 EDN 10/20)**

46.1 For the purposes of DEFCON 566:

(a) reference to the "Contractor" shall be replaced with reference to the "Supplier";

(b) reference to the "Representative of the Authority" shall be replaced with reference to the "Authority's Commercial Officer".

46.2 The Contractor shall notify the Representative of the Authority at the address given in Clause 46.4, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Sub-contractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

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

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

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

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

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

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- 46.5 The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Supplier prior to Contract Award.
- 46.6 The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with Clause 46.2. The Authority shall act reasonably in exercising its right of termination under this Condition.
- 46.7 If the Authority exercises its right to terminate in accordance with Clause 46.6 the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this Clause 46.7 must be fully supported by documentary

evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

- 46.8 Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Condition.

## **47 ASSIGNMENT AND NOVATION**

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

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

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

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 47.2.

- 47.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 47.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

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

- 47.5 Subject to the Supplier obtaining the prior written consent of the Authority in accordance with Clause 47.1 above, the Supplier may assign to a third party ("**the Assignee**") the right to receive payment of the Charges or any part thereof due to the Supplier under this Contract (including any interest incurred by the Authority under any Contract clause concerning the late payment of debts).
- 47.6 Any assignment of the right to receive payment of the Charges (or any part thereof) under Clause 47.5 above shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under Paragraph 2 of Part E of Schedule 15 (*Charges and Invoicing*), or any narrative clause concerning recovery of sums due;
  - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - (c) the Authority receiving notification under both Clause 47.7 and sub-Clause 47.8(b) below.
- 47.7 In the event that the Supplier obtains from the Authority the consent to assign the right to receive the Charges (or any part thereof) under Clause 47.5 above, the Supplier shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 47.8 The Supplier shall ensure that the Assignee:
- (a) is made aware of the Authority's continuing rights under sub-Clauses 47.6(a) and 47.6(b); and
  - (b) notifies the Authority of the Assignee's contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-Clauses 47.6(a) and 47.6(b) above.
- 47.9 The provisions of the Contract, including any clauses concerning payment, shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

## **48 WAIVER AND CUMULATIVE REMEDIES**

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

## **49 RELATIONSHIP OF THE PARTIES**

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

## **50 PREVENTION OF FRAUD AND BRIBERY**

- 50.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 50.2 The Supplier shall not during the term of this Contract:
- (a) commit a Prohibited Act; and/or

- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

50.3 The Supplier shall during the term of this Contract:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) have in place reasonable prevention measures (as defined in Sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 50.3(a) and make such records available to the Authority on request; and
- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

50.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 50.1 and/or 50.2, or has reason to believe that it has or any of the Supplier Personnel have:

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

- 50.5 If the Supplier makes a notification to the Authority pursuant to Clause 50.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 19 (*Records, Reports, Audits and Open Book Data*).
- 50.6 If the Supplier is in Default under Clauses 50.1 and/or 50.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
  - (b) immediately terminate this Contract.
- 50.7 Any notice served by the Authority under Clause 50.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

## **51 SEVERANCE**

- 51.1 If any provision of this Contract (or part of any provision) is held to be void, invalid, illegal or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 51.2 In the event that any deemed deletion under Clause 51.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 51.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 51.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 23 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Contract shall

automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 51.3.

## **52 FURTHER ASSURANCES**

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

## **53 ENTIRE CONTRACT**

- 53.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 53.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 53.3 Nothing in this Clause 53 shall exclude any liability in respect of misrepresentations made fraudulently.

## **54 THIRD PARTY RIGHTS**

- 54.1 The provisions of Clause 25.1 (*IPRs Indemnity*), Paragraphs 2.5 of Part 2 of Schedule 28 (*Staff Transfer*) and the provisions of Paragraph 6.9 of Schedule 25 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 54.2 Subject to Clause 54.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 54.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.



54.4 The Supplier shall inform any Third Party Beneficiary 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.

54.5 The Third Party Beneficiary's rights shall be subject to any provision in the Contract:

- (a) that provides for the submission of disputes under the Contract generally or the said rights in particular to arbitration; and
- (b) that stipulates the law and jurisdiction that will govern the Contract.

54.6 Any amendments or modifications to this Contract may be made, and any rights created under Clause 54.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

## **55 NOTICES**

55.1 Any notices sent under this Contract must:

- (a) be given in writing;
- (b) be authenticated by signature or by such other method as agreed between the parties;
- (c) be marked for the attention of the appropriate department or officer;
- (d) be marked in a prominent position with the relevant Contract number.

55.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

<b>Manner of Delivery</b>	<b>Deemed time of service</b>	<b>Proof of service</b>
Email	if between 9.00am and 5.00pm, it would be deemed served on the same day at the time sent. If after 5pm, it would be deemed served at	Dispatched as an attachment to an e-mail to the correct e-mail address without any error message.

	9.00am on the first Working Day after sending	
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

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

	Supplier	Authority
<b>Contact</b>		
<b>Address</b>		
<b>Email</b>		

55.4 Where either party requests written confirmation of any communication which does not constitute a notice, such request shall not unreasonably be refused.

55.5 This Clause 55 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

(other than the service of a Dispute Notice under Schedule 23 (*Dispute Resolution Procedure*)).

## **56 DISPUTES**

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

56.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved unless directed otherwise by the Authority.

## **57 GOVERNING LAW AND JURISDICTION**

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

57.2 Subject to Clause 56 (*Disputes*) and Schedule 23 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any actions, proceedings, controversy, dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

57.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause and for the enforcement of any judgement, order or award given under English and Welsh jurisdiction.

This Contract has been duly executed by the Parties on the date which appears at the head of its page 1.

**SIGNED** for and on behalf of  
**Reed in Partnership Limited** by a director:

Signature: REDACTED

Name (block  
capitals):

Director

**SIGNED** for and on behalf of  
**The Secretary of State for Defence**

Signature: REDACTED

Name (block  
capitals):

Position: