

**THIS CONTRACT** is made on 15<sup>th</sup> November 2022

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the "Authority"); and
- (2) **THALES UK LIMITED** registered in England (number 00868273), whose registered office is at **350 Longwater Avenue, Green Park, Reading, RG2 6GF** operating through its **Defence Mission System Domain** whose principal place of business is at **Manor Royal, Crawley, West Sussex, RH10 9HA** (the "Contractor").

together, the "Parties".

**BACKGROUND:**

- (A) On 25 May 2021 the Authority advertised in Find a Tender (contract notice 2021/S 000-011670) inviting prospective providers to submit proposals for the provision of a number of UAS and ancillaries under a Military Owned Military Operated arrangement to be delivered to the RN and Integrated onto a Naval Warship to provide the RN with a FTUAS Urgent Capability Requirement, and for the provision of through life support and the provision of training for operators and maintainers.
- (B) On the basis of the Contractor's response to the advertisement and a subsequent tender process, the Authority selected the Contractor as its preferred provider.
- (C) [The Authority has entered into an early works contract with the Contractor to carry out certain early works relating to the provision of the UAS and the FTUAS System (the "FTUAS Early Works Contract").]
- (D) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**PART 1 - DEFINITIONS AND INTERPRETATION**

**1 Definitions and Interpretation**

1.1 In this Contract (unless the context otherwise requires):

- 1.1.1 the terms and phrases defined in Schedule G (*Definitions*) shall have the meanings given to them in that Schedule;
- 1.1.2 the acronyms set out in Schedule G (*Definitions*) shall have the meanings given to them in that Schedule;
- 1.1.3 the masculine includes the feminine and vice versa, and words importing the neuter include the masculine and the feminine and vice versa;
- 1.1.4 the singular includes the plural and vice versa;

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- 1.1.5 the words "include", "includes", "including" and "included" shall be construed as if they were immediately followed by the words "without limitation" except where explicitly stated otherwise;
- 1.1.6 the expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture and includes their successors and permitted assignees or transferees;
- 1.1.7 unless stated to the contrary, any reference to this Contract or to any other document shall include any variation, amendment or supplement to such document;
- 1.1.8 references to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, supplemented, replaced or consolidated by any subsequent enactment, order, regulation or instrument;
- 1.1.9 the heading to any provision in this Contract shall not affect the interpretation of that provision;
- 1.1.10 any decision, act, or thing which the Authority is required or authorised to take or do under this Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority;
- 1.1.11 unless excluded within the terms of this Contract or where otherwise required by law:
- (i) references to submission of documents in writing shall include electronic submission;
  - (ii) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as previously agreed between the Parties is employed and such agreed method is recorded in this Contract;
  - (iii) a reference in this Contract to any Clause, part, paragraph, Schedule, Appendix or Annex is, except where expressly stated to the contrary, a reference to such Clause, part, paragraph or Schedule of or Appendix or Annex to this Contract; and
  - (iv) a reference in this Contract to any Clause or paragraph is a reference to the whole of that Clause or paragraph unless stated otherwise;
- 1.1.12 a reference to a "day" or "days" are references to calendar day(s) unless specified as being Working Day(s);
- 1.1.13 references to a "month" or "months" are references to calendar month(s) unless specified as being Contract Month(s);

- 1.1.14 "loss" includes damage or destruction; and
- 1.1.15 The Schedules, Appendices and the Annexes are incorporated in, and shall form part of, this Contract and the Parties shall comply with such Schedules, Appendices and the Annexes.

## **2 Precedence**

- 2.1 If there is any inconsistency between the provisions of the main body of this Contract and the Schedules, the Appendices and/or the Annexes, or between any of the Schedules, the Appendices and/or the Annexes, the conflict shall be resolved according to the following descending order of priority:
  - 2.1.1 the main body of this Contract;
  - 2.1.2 Schedule A (*Contractor's Obligations*); and
  - 2.1.3 the remaining Schedules and their respective Appendices and Annexes, other than Schedule Q (*Contractor's Proposed Solution*).
- 2.2 Any works performed and any obligations under the FTUAS Early Works Contract shall be incorporated into the terms of this Contract, and the terms of this Contract shall apply to the FTUAS Early Works Contract.
- 2.3 If there is any conflict or inconsistency between the provisions of this Contract and the provisions of any document referred to in this Contract (including any other document referred to in that or any subsequent document), then the provisions of this Contract shall prevail.
- 2.4 If a Party becomes aware of any conflict or inconsistency within or between the documents referred to in Clauses 2.1, 2.2 and/or 2.3 (*Precedence*), such Party's Representative shall notify the other Party's Representative immediately. If the Authority decides a Change is required to resolve the conflict or inconsistency it shall issue an Authority Notice of Change in accordance with Clause 84 (*Change*) which shall apply save that such Change shall not result in an increase to the Contract Price or the Pricing Information.

## **PART 2 - CORE OBLIGATIONS**

### **3 The Contractor's Obligations**

- 3.1 The Contractor shall:
  - 3.1.1 comply with its obligations in Schedule A (*Contractor's Obligations*);
  - 3.1.2 deliver the Contractor Deliverables and/or shall ensure that the Contractor Deliverables are delivered in accordance with and, in each case, having due regard to:
    - (i) Good Industry Practice;
    - (ii) all Necessary Consents;

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- (iii) Legislation;
  - (iv) this Contract including Schedule A (*Contractor's Obligations*); and
  - (v) Task Authorisation Forms (TAFs);
- 3.1.3 deliver the Contractor Deliverables using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money; and
- 3.1.4 continue to perform all of its obligations under this Contract and shall not suspend the performance of the Contractor Deliverables, notwithstanding:
  - (i) any withholding by the Authority in accordance with this Contract and/or the application of any Retentions pursuant to Schedule K (*KPIs*);
  - (ii) the existence of an unresolved Dispute; and/or
  - (iii) any failure by the Authority to pay any sums due.
- 3.2 To avoid doubt, the obligations in Clause 3.1 (*The Contractor's Obligations*) are independent obligations. In particular:
  - 3.2.1 the fact that the Contractor has complied with the Contractor's Proposals shall not be a defence to an allegation that the Contractor has not satisfied Schedule A (*Contractor's Obligations*); and
  - 3.2.2 the fact that the Contractor has satisfied Schedule A (*Contractor's Obligations*) shall not be a defence to an allegation that the Contractor has failed to comply with the Contractor's Proposals.
- 3.3 Not used.
- 3.4 Not used.
- 3.5 Not used.
- 3.6 The Contractor further acknowledges that during the Contract Period the Authority is relying on the Contractor's expertise, experience and skill in identifying any such related and/or additional tasks and activities in order that the Contractor is able to carry out the relevant required tasks and activities and achieve the full required outputs of Schedule A (*Contractor's Obligations*).

**4 Pricing and Payment**

**Pricing and Payment**

- 4.1 The Project Management and Technical Support Fee in respect of each Contract Month is calculated in accordance with Schedule C (*Pricing and Payment*).
- 4.2 Notwithstanding:

- 4.2.1 any provisions in this Contract; and/or
- 4.2.2 any information provided to the Contractor before or after the Effective Date,

save for when expressly identified as a pricing assumption either in this Contract or in a TAF, no limitation on liability, exclusion, assumption or similar provision set out in this Contract or otherwise shall give the Contractor the right to increase a Firm Price.

## **5 Ad Hoc Task Order Approval Process**

- 5.1 From time to time, the Authority may require the Contractor to provide optional services in accordance with Schedule C (*Pricing and Payment*).
- 5.2 Both parties agree that these Tasks shall be used solely for the purposes of discrete non-recurring activities or tasks, to be undertaken for specific purposes that are not pre-planned or covered under the existing Obligations of the Contractor given at Schedule A (*Contractor's Obligations*).
- 5.3 When such a requirement arises both parties shall use the Task Authorisation Form (TAF) at Schedule E (*TAF*) and follow the process described below:
  - 5.3.1 The Authority shall initiate a Task by completing Part A of the TAF and issuing it to the Contractor.
  - 5.3.2 The Contractor shall complete Part B of the TAF within the timescales specified in Part A.
  - 5.3.3 The Authority shall set the 'Required Response Date for PART B' of the TAF no less than ten (10) Working Days after the TAF is issued. If the Contractor requires longer than ten (10) Working Days to respond to the TAF, then the Contractor shall inform the Authority with five (5) Working Days of receiving the TAF and an extended period shall be agreed between the two parties.
  - 5.3.4 The Contractor shall provide in Part B full details of its proposal to meet the Authority's requirement as described in Part A, and in accordance with DEFCON 643, and shall include its:
    - (i) Firm Price quotation including any proposed stage payments;
    - (ii) Proposed commencement date;
    - (iii) Proposed completion date;
    - (iv) A validity period that is at least 10 Working Days where the quotation is open for acceptance;
    - (v) Deliverable and acceptance criteria;
    - (vi) All other requirements of the TAF.

- 5.4 The Authority shall confirm its acceptance of the Contractor's quotation by means of the Authority's signature and issue to the Contractor of Part C – Approvals and Acceptance – Authority to Proceed of the TAF. The Authority shall complete Part C of the TAF and return it to the Contractor within the period specified by the Contractor in accordance with Clause 5.3.4(iv). If the Authority fails to issue Part C of the TAF to the Contractor in this timeframe the Contractor shall have the right to withdraw or amend the TAF. The Authority shall inform the Contractor if more than ten (10) Working Days are required to undertake a review of the proposal within the first five (5) Working Days following receipt of the TAF.
- 5.5 The Authority shall not be liable to make any payment to the Contractor for any part of an Ad Hoc Task performed before receipt by the Contractor of Part C of the TAF.
- 5.6 The Contractor shall then complete and submit Part D to the Authority confirming Contractor's acceptance of the Task to the Authority and expected end date within ten (10) Working Days.
- 5.7 The Contractor shall then inform the Authority once work is complete through submission of Part E1.
- 5.8 The Authority shall accept the Contractor has completed the task in signing Part E2 aligned with the acceptance process agreed for each individual Ad Hoc Task. The claim for payment should then be submitted by the Contractor in accordance with Clause 16 (*Payment under CP& F*).
- 5.9 Details of the Tasks agreed shall be recorded by the Contractor in Table 1 at Schedule F (*TAF Record*) as a record of Tasks and prices agreed.
- 5.10 If either Party has a dispute over the Ad Hoc Tasking process, then the matter shall be determined in accordance with the Dispute Resolution Procedure describe in Clause 96 (*Dispute Resolution*).

**6 Not used.**

**7 Contract Period**

- 7.1 Subject to Clauses 7.2 to 7.3 (inclusive), this Contract and the rights and obligations of the Parties shall take effect on the Effective Date and, except as set out in Clause 82 (*Continuing Obligations*), shall terminate on the earlier of the:

7.1.1 Expiry Date, as the same may be extended pursuant to Clause 7.2 (*Exercise of Optional Extension*); and

7.1.2 Termination Date.

**Exercise of Optional Extension**

- 7.2 In consideration of the Authority agreeing to enter into this Contract, the Contractor hereby grants to the Authority the right to (in its absolute discretion) extend the term of this Contract by:

- 7.2.1 a single further period or multiple further periods of at least six (6) months ("**Optional Extension**"); and
  - 7.2.2 giving the Contractor at least three (3) months' advance notice,
- provided the total period of the Optional Extension does not exceed twenty-four (24) months.
- 7.3 Following the exercise of the Optional Extension pursuant to this Clause 7 (*Contract Period*):
    - 7.3.1 any rights and obligations of the Parties existing under this Contract prior to the exercise of such Optional Extension shall continue to apply; and
    - 7.3.2 the Contract Price shall be calculated in accordance with Part 2 of Schedule C (*Pricing and Payment*).

## **8 Contractor Warranties and Undertakings**

### **Contractor warranties**

- 8.1 The Contractor warrants and represents to the Authority that:
  - 8.1.1 it has the power to enter into and to exercise its rights and perform its obligations under this Contract and any Sub-Contracts and all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;
  - 8.1.2 it is validly incorporated, organised and subsisting in accordance with the law of its place of incorporation;
  - 8.1.3 this Contract is executed by its duly authorised representative;
  - 8.1.4 it has all necessary consents and regulatory approvals to enter into this Contract;
  - 8.1.5 at the date of this Contract the entire share capital in the Contractor is legally and beneficially owned by Thales Holdings UK Plc, a company incorporated in England and Wales (with Registered Number 00868273) whose registered office is situated at 350 Longwater Avenue, Green Park, Reading, Berkshire, RG2 6GF, UK and that no arrangements are in place or are contemplated that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor;
  - 8.1.6 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunals pending or to its knowledge, threatened against it or any of its Contractor Related Parties that might affect its ability to perform its obligations under this Contract;

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- 8.1.7 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Legislation, other law (in any jurisdiction), or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 8.1.8 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 law 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);
- 8.1.9 all written statements and representations in any written submissions made by the Contractor as part of the procurement process, 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 Contractor has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- 8.1.10 it is not subject to any contractual or other obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 8.1.11 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 Contractor 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 Contractor's assets or revenue and as at Contract Award no Insolvency Event has occurred;
- 8.1.12 it shall not commit, and in entering into this Contract it has not committed, any Prohibited Act and for this purpose only the words "or without" in the introduction of the definition of Prohibited Act shall be deleted;
- 8.1.13 it, nor to the best of its knowledge any Contractor Related Party nor any of the Contractor's employees, consultants, Sub-Contractors or agents, have at any time prior to the Effective Date:
- (i) 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
  - (ii) 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;
- 8.1.14 it shall:
- (i) 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



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Relevant Requirements and prevent the occurrence of a Prohibited Act; and

- (ii) keep appropriate records of its compliance with its obligations under Clause 8.1.14(i) (*Contractor warranties*) and make such records available to the Authority on request;
- 8.1.15 it shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 8.1.13 (*Contractor warranties*), or has reason to believe that it has or any of the Contractor Related Parties or any of the Contractor's employees, consultants, Sub-Contractors or agents have:
- (i) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (ii) 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
  - (iii) 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;
- 8.1.16 so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any Third Party's Intellectual Property Rights in connection with this Contract;
- 8.1.17 it has all necessary rights in and to the Contractor Background IPR, the Vesting IPR, the Contractor Foreground IPR, the Third Party Licensed Software and any other materials (including the Third Party IPR made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority; and
- 8.1.18 it has used and will continue to use the degree of skill, care, diligence, best up-to-date practice and foresight in the performance of each of the Contractor Deliverables that would reasonably be expected of a fully qualified and competent professional Contractor experienced in carrying out activities of a similar nature, scope, size, timescale and complexity to those comprised in the Contractor Deliverable,

and the Authority relies upon each of the individual warranties and individual representations in this Clause 8 (*Contractor Warranties and Undertakings*).

**Contractor undertakings**

- 8.2 The Contractor undertakes that for so long as this Contract remains in full force the Contractor shall:

8.2.1 give the Authority:

- (i) notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority ("**Dispute Forum**") against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of this Contract, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the Dispute Forum, provided that notice shall be given within twenty (20) Working Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof; and
- (ii) immediate notice if an Insolvency Event occurs or is threatened;

8.2.2 save as expressly permitted under this Contract, not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;

8.2.3 at all times allocate sufficient resources with the appropriate technical expertise to supply the Contractor Deliverables in accordance with this Contract;

8.2.4 save to the extent that obtaining and maintaining the same are Authority responsibilities and subject to Clause 84 (*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 Contractor Deliverables;

8.2.5 ensure that:

- (i) it shall continue to have all necessary rights in and to the Contractor Background IPR, the Vesting IPR, the Contractor Foreground IPR, the Third Party Licensed Software and any other materials (including the Third Party IPR, Deliverable Information and Interfaces) made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority;
- (ii) any products or services recommended or otherwise specified by the Contractor for use by the Authority in conjunction with the Contractor Deliverables shall enable the Contractor Deliverables to meet the requirements of the Authority; and
- (iii) without prejudice to Clause 3.1.2(i) (*The Contractor's Obligations*), any documentation and training provided by the Contractor to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;

- 8.2.6 co-operate with the Authority and (where applicable) any Third Party designated by the Authority and provide such information, licences, data, documents and/or physical items and any advice and/or assistance in connection with the Contractor Deliverables, in each case, as may be reasonably required by the Authority, enabling:
- (i) the Authority and/or any such Third Party to create and maintain technical or organisational interfaces with any of the Contractor Deliverables and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Contractor Deliverables to the Authority and/or to any Follow-On Contractor;
  - (ii) the Authority or any Third Party to ensure that the deliverables to be provided to the Authority or such Third Party interface and/or integrate and/or are compatible with the Contractor Deliverables (to the extent that the full and proper performance of such deliverables by the Authority or any such Third Party is dependent upon such deliverables being interfaced and/or integrated with and/or being compatible with the Contractor Deliverables);
  - (iii) where applicable, the Authority or any such Third Party to assemble, build, integrate (including Integrate), operate, maintain, update, release to fielding, develop, evolve and/or de-commission the relevant Articles and/or the UAS; and
  - (iv) where applicable as part of the Contractor Deliverables, the Contractor to assemble, build, integrate (including Integrate), maintain, update, release to fielding and/or de-commission the relevant Articles and/or the UAS;
- 8.2.7 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 Contractor Deliverables and/or the UAS 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 Contractor;
- 8.2.8 unless it is unable to do so, assign to the Authority on the Authority's Representative's written request and at the cost of the Contractor any such warranties and/or indemnities as are referred to in Clause 8.2.7 (*Contractor undertakings*);
- 8.2.9 provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Contractor Deliverables;
- 8.2.10 gather, collate and provide such information and co-operation as the Authority's Representative may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Contract; and

- 8.2.11 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 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 Contractor's obligations under this Contract.

**Status of Contractor warranties and undertakings**

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

**9 Co-operation**

- 9.1 Each Party agrees to co-operate with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other's obligations under this Contract.
- 9.2 The Parties shall work together in an open and honest environment with the aim of achieving successful partnering and continuous improvement in:
- 9.2.1 value for money for the Authority; and
- 9.2.2 the quality and standard of service to the Authority,
- in relation to this Contract.

**10 NM&D**

**Neglect, Missue & Damage (NM&D)**

- 10.1 Where items returned for repair are suspected of being subjected to Neglect, Misuse, or Damage (NM&D), then the Contractor shall notify the Authority and adopt the process as detailed below:
- 10.1.1 The Authority shall not hold the Contractor responsible for damage to any item which can be reasonably demonstrated to be caused by NM&D. Claims against the Authority for NM&D will be sentenced between Contractor and Authority for agreement. To support sentencing the Contractor will be required to provide evidence.
- 10.1.2 In the event the Authority agrees that an item has been subject to NM&D and at the appropriate point in the NM&D process, the Contractor shall provide a quotation to the Authority for all costs associated with the identification, repair or replacement of such item(s) within twenty (20) business days or within a timeframe as mutually agreed between the Parties.
- 10.1.3 The Authority shall have the option to authorise the repairable item to be repaired or request a replacement or provided where applicable and shall be funded and processed through Clause 5 (*Ad Hoc Task Order Approval*)

Process). The Authority also has the option not to task the repair or replacement but should this impact the Contractor's ability to meet the obligations under Schedule K (*Performance*) the Contractor will be entitled to appropriate relief to ensure there is no impact on the Contractor under the Contract.

- 10.1.4 Any damaged item not repaired will be returned to Purple Gate at the cost to the Authority which shall be agreed under Ad Hoc Tasking mechanism at Clause 5 (*Ad Hoc Task Order Approval Process*).

## **11 Necessary Consents**

- 11.1 The Contractor shall, without prejudice to its obligations under Clause 15 (*Import and Export Licences*):

11.1.1 obtain, maintain, renew and amend (in each case, as required) all Necessary Consents which may be required for the provision of the Contractor Deliverables under this Contract, including the entering into of any legally binding agreements necessary for the grant of the Necessary Consents;

11.1.2 use all reasonable endeavours to assist the Authority to obtain all Necessary Consents that as a matter of law, only the Authority is eligible to obtain;

11.1.3 be responsible for implementing each Necessary Consent (save to the extent that only the Authority is, as a matter of law, able to implement the whole or the relevant part of such Necessary Consent) within the period of its validity in accordance with its terms and relevant law;

11.1.4 provide to the Authority, when required, a copy of:

- (i) any application for a Necessary Consent or any variation, relaxation or waiver (with a copy of all accompanying drawings and other documents);
- (ii) any Necessary Consent; and
- (iii) any legally binding agreement entered in to for the purposes of obtaining a Necessary Consent,

where such agreement permits such disclosure;

11.1.5 comply with the conditions attached to any Necessary Consents and the terms of any associated legally binding agreement and procure that no such Necessary Consent or associated legally binding agreement is breached by it or any Contractor Related Party; and

11.1.6 use all reasonable endeavours to preserve the Necessary Consents, and procure, where it is able to do so, that such Necessary Consents are not revoked or quashed and that all Necessary Consents continue in full force

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and effect for such time as is necessary for the Contractor to provide the Contractor Deliverables to the Authority.

- 11.2 The Authority shall, subject to the Contractor's compliance with Clause 11.1.2 (*Necessary Consents*), use all reasonable endeavours to obtain all Necessary Consents that as a matter of law, only the Authority is eligible to obtain.
- 11.3 The Contractor shall indemnify and keep indemnified the Authority against all Losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by the Authority in respect of any breach of Clause 11.1 (*Necessary Consents*).

**12 Contractor Related Parties**

- 12.1 The Contractor shall be responsible and liable for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor.
- 12.2 The Contractor shall ensure and/or procure that all Contractor Related Parties employed and/or engaged in connection with this Contract are appropriately qualified, trained and experienced.

**13 Approval by the Authority**

- 13.1 Except for a confirmation of a Change pursuant to Clause 84 (*Change*) which expressly changes the Contractor's obligations or liabilities or the Authority's rights under this Contract and/or save as expressly stated in this Contract, no review, comment or approval by the Authority (whether orally or in writing) shall operate to exclude, diminish or limit the Contractor's obligations or liabilities or the Authority's rights under this Contract.

**PART 3 - SUB-CONTRACTORS**

**14 Sub-Contractors**

- 14.1 Sub-Contracting any part of this Contract to a Sub-Contractor shall not relieve the Contractor of any obligation or duty of the Contractor under this Contract. If the Contractor enters into any Sub-Contract in connection with this Contract it shall remain responsible for the performance of its obligations under this Contract notwithstanding the appointment of any Sub-Contractor and shall be responsible for the acts and omissions of its Sub-Contractors.
- 14.2 Not used.

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- 14.3 The Contractor shall exercise due skill and care in the selection and appointment of any Sub-Contractor to ensure that the Contractor is able to:
- 14.3.1 manage any Sub-Contractor in accordance with Good Industry Practice;
  - 14.3.2 diligently enforce the terms of the Sub-Contracts;
  - 14.3.3 comply with its obligations under this Contract in the delivery of the Contractor Deliverables; and
  - 14.3.4 assign, novate or otherwise transfer to the Authority or any Follow-On Contractor any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 14.4 Not used.
- 14.5 Not used.
- 14.6 Not used.

**Matters to be included in Sub-Contracts**

- 14.7 The Contractor shall ensure that all Sub-Contracts which it enters into after the Effective Date shall at all times include:
- 14.7.1 provisions that the Authority's rights referred to in this Clause 14.7 (*Matters to be included in Sub-Contracts*), which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable;
  - 14.7.2 provisions which will enable the Contractor to discharge its obligations under this Contract;
  - 14.7.3 a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the Sub-Contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause 14.7 (*Matters to be included in Sub-Contracts*) and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract;
  - 14.7.4 a provision restricting the ability of the Sub-Contractor to sub-contract all or any part of the Contractor Deliverables provided to the Contractor under the Sub-Contract without first obtaining the written consent of the Authority;
  - 14.7.5 not used;
  - 14.7.6 a provision that where any Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice within thirty (30) days and that where there is an undue delay in considering and/or verifying that invoice, that such invoice shall be regarded as valid and undisputed for the purposes of Clause 14.7.7 (*Matters to be included in Sub-Contracts*);

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- 14.7.7 a provision which requires payment to be made to the Sub-Contractor by the Contractor within a specified period not exceeding thirty (30) days from receipt of a valid, undisputed invoice as defined by the Sub-Contract requirements;
- 14.7.8 a provision giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period;
- 14.7.9 a provision enabling the Authority or any other person on behalf of the Authority and the Contractor to exercise the same rights in relation to the Sub-Contractors and their Employees as the Authority is entitled to exercise pursuant to Clause 45 (*Personnel Security*);
- 14.7.10 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority or any Follow-On Contractor without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 14.7.11 the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute as set out in Clause 8.2.11 (*Contractor Warranties and Undertakings*);
- 14.7.12 a provision giving the Contractor 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;
- 14.7.13 not used;
- 14.7.14 where relevant to the deliverables under the particular Sub-Contract (and where all such provisions shall be presumed to be relevant unless the Contractor can satisfy the Authority that such provisions are not relevant and the Authority's Representative has notified the Contractor in writing that any such provisions shall not be required to be included in any identified Sub-Contract), the provisions (*mutatis mutandis*) of:
  - (i) Clauses 14.11 and 14.12 (*Termination of Sub-Contracts*);
  - (ii) Clause 31 (*Authority Data*);
  - (iii) Clause 33 (*The Contractor's Records*);
  - (iv) Clause 39.2 (*Official-Sensitive Security Requirements*);
  - (v) Clause 40 (*Cyber*);
  - (vi) Clause 41 (*Intellectual Property Rights*);
  - (vii) Clause 43 (*Security Aspects Letter*);
  - (viii) Clause 44 (*Security – Secret Matters*);



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- (ix) Clause 51 (*Child Labour and Employment Law and Modern Slavery Act*);
- (x) Clause 52 (*Equality*);
- (xi) Clause 56 (*Supply of Hazard Data*);
- (xii) Clause 59 (*Vesting*);
- (xiii) Clause 79 (*Termination for Convenience*);
- (xiv) Clause 87 (*Change of Control*);
- (xv) Clause 93 (*Tax Compliance*);
- (xvi) Clause 96 (*Dispute Resolution*);
- (xvii) not used;
- (xviii) Schedule S (*IPR*);
- (xix) not used; and
- (xx) where applicable, the Appendix to DEFCON 643 (*Price Fixing (Non-Qualifying Contracts)*);

- 14.7.15 such provisions as are required to enable the Contractor to perform its obligations under Schedule A (*Contractor's Obligations*) and Schedule N (*Transfer Regulations (TUPE)*) and to acquire the rights, benefits and obligations set out in Schedule S (*IPR*).
- 14.8 The Contractor shall ensure that all Sub-Contracts include the power to determine the Sub-Contract in accordance with the terms which apply to any termination of this Contract and to enable the Contractor to comply with Clause 14 (*Sub-Contractors*) of this Contract.
- 14.9 If any Sub-Contractor refuses to accept the requirements of Clauses 14.7 and 14.8 (*Matters to be included in Sub-Contracts*) then the Contractor shall promptly (but in any event, no later than twenty-eight (28) Working Days from identifying the issue) report the matter to the Authority and, without prejudice to the Contractor's obligations to deliver the Contractor Deliverables, the Contractor shall not enter into the relevant Sub-Contract until the Authority confirms in writing to the Contractor that the matter has been resolved.
- 14.10 Notwithstanding any other provisions of this Contract, if the Contractor notifies the Authority that the Contractor has failed to pay a Sub-Contractor's undisputed invoice within the period specified in accordance with Clause 14.7.7 (*Matters to be included in Sub-Contracts*), 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**

14.11 The Contractor shall inform the Authority immediately when it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in Clause 40 (*Cyber*), Clause 44.7 (*Security – Secret Matters*), Clause 56.9 (*Supply of Hazard Data*), Clause 78 (*Termination for Contractor Default*) (as it applies to Prohibited Acts (including any breach of (and/or the occurrence of the circumstances contemplated in) Clauses 8.1.13, 8.1.14 and/or 8.1.15 (*Contractor warranties*), Clause 87 (*Change of Control*) and/or Clause 93 (*Tax Compliance*) and (without prejudice to any other rights of the Authority under this Contract) if requested to do so by the Authority, shall terminate the relevant Sub-Contract.

14.12 The Authority may, at its sole discretion, require the Contractor to terminate the provision by a Sub-Contractor of the whole or part (as the case may be) of the Contractor Deliverables:

14.12.1 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 78 (*Termination for Contractor Default*);
- (ii) the relevant Sub-Contractor and/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 Contractor Deliverables or otherwise; and/or
- (iii) the relevant Sub-Contractor fails to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and

14.12.2 where there is a Change of Control of the relevant 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 six (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.

## **15 Import and Export Licences**

15.1 If, in the performance of this Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor.

**Obtaining a licence or authorisation from a foreign government – Contractor obligations**

- 15.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of this Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements and, where the Contractor or any Contractor Related Party is the applicant for the licence or authorisation the Contractor shall:
- 15.2.1 ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Clause 15 (*Import and Export Licences*) shall also include information, technical data and software), unless otherwise agreed with the Authority, identify in the application:
- (i) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "**HM Government**"); and
  - (ii) the end use as: For the purposes of HM Government; and
- 15.2.2 include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- 15.3 If the Contractor or any Sub-Contractor in the performance of this Contract or a Sub-Contract (as applicable) needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Sub-Contractor, provided always that for the purposes of this Clause 15 (*Import and Export Licences*) "materiel" shall mean information, technical data and items, including Articles, components of Articles and software:
- 15.4 Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall submit this information to the Authority's Representative.
- 15.5 During the Contract Period and for a period of up to three (3) years from the end of the Contract Period, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised Third Party. If the Authority makes such a request, it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstances to make the request. Where subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
- 15.5.1 the Contractor shall, or procure that the Sub-Contractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an

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application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) Working Days to resolve the issue and, should they fail to resolve the issue, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing, import licensing or authorisation (as the case may be) subject matter experts; and

- 15.5.2 the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- 15.6 Where the Authority determines that it is best placed to make a request pursuant to Clause 15.5 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*), the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- 15.7 Where compliance with Clauses 15.5 and 15.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*) requires an amendment to this Contract, such amendment will be made and any subsequent price variation will be determined in accordance with Clause 84 (*Change*) unless the Authority, at its option, elects to require the Contractor to carry out some or all of the matters required to comply with Clauses 15.5 and 15.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*) in accordance with Clause 5 (*Ad Hoc Task Order Approval Process*).
- 15.8 Where the Authority invokes Clauses 15.5 and 15.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*), the Authority will pay the Contractor's fair and reasonable costs for such service based on the cost of providing it, such costs to form part of the Contract Price.

**Obtaining a licence or authorisation from a foreign government – Authority obligations**

- 15.9 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign government in respect of the performance of this Contract.
- 15.10 The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of this Contract.

**Contractor obligation to provide information**

- 15.11 The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
- 15.11.1 a non-UK export licence, authorisation or exemption; or
- 15.11.2 any other related transfer or export control,

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that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality.

- 15.12 If at any time during the Contract Period the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clauses 15.11.1 or 15.11.2 (*Contractor obligation to provide information*), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- 15.13 If the information to be provided under Clause 15.12 (*Contractor obligation to provide information*) has been provided previously to the Authority by the Contractor under this Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 15.12 (*Contractor obligation to provide information*).
- 15.14 During the Contract Period, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clauses 15.12 or 15.13 (*Contractor obligation to provide information*) of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 15.15 For a period of up to three (3) years from the end of the Contract Period however extended in accordance with the terms of this Contract and in response to a specific request by the Authority's Representative, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clauses 15.12 or 15.13 (*Contractor obligation to provide information*) of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 15.16 Where following receipt of materiel from a Sub-Contractor or any of its other suppliers, restrictions are notified to the Contractor by that Sub-Contractor, supplier or other Third Party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within five (5) Working Days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the Contractor within ten (10) Working Days of receipt of a proposal whether it is acceptable and where appropriate this Contract shall be modified in accordance with its terms to implement the proposal.
- 15.17 If the restrictions prevent the Contractor from performing its obligations under this Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend this Contract in accordance with Clause 84 (*Change*) or as otherwise may be provided by this Contract or to terminate this Contract. Except as set out in Clause 15.18 (*Contractor obligation to provide information*), in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all

the circumstances including payments already made and payments that would otherwise be due under this Contract for work successfully carried out prior to such termination, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to Dispute Resolution Procedure.

- 15.18 If the restrictions notified to the Authority pursuant to Clause 15.12 (*Contractor obligation to provide information*) were known or ought reasonably have been known by the Contractor (but were not disclosed) at Contract Award or if restrictions notified to the Authority pursuant to Clauses 15.14 or 15.16 (*Contractor obligation to provide information*) were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 15.12 (*Contractor obligation to provide information*), termination under Clause 15.17 (*Contractor obligation to provide information*) will be in accordance with Clause 78 (*Termination for Contractor Default*) and the provisions of Clause 15.22 (*Interim position*) will not apply.

**Authority obligation to provide information**

- 15.19 The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor. Where the Authority is to provide materiel necessary to enable the Contractor to perform this Contract or in respect of which the Contractor Deliverables are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 15.11 (*Contractor obligation to provide information*) above, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
- 15.20 If the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified, then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. If the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
- 15.21 Where:
- 15.21.1 restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clause 15.19 or 15.20 (*Authority obligation to provide information*); or
  - 15.21.2 any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate,

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the

restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under this Contract, the matter shall be handled under the terms of Clause 84 (*Change*) or as may otherwise be provided by this Contract as appropriate and if no alternative solution satisfies the essential terms of this Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate this Contract. Termination under these circumstances will be under the terms of Clause 79 (*Termination for Convenience*).

**Interim position**

- 15.22 Pending agreement of any amendment of this Contract as set out in Clause 15.17 (*Contractor obligation to provide information*) or 15.21 (*Authority obligation to provide information*), provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of this Contract directly affected by the restrictions or provision of incorrect or incomplete information.

**PART 4 - PRICE/COSTS/PAYMENT**

**16 Payment under CP&F**

- 16.1 In consideration of the Contractor performing the Contractor Deliverables, the Authority shall pay the Contract Price to the Contractor in accordance with Schedule C (*Pricing and Payment*) and the following provisions of this Clause 16 (*Payment under CP&F*).
- 16.2 Payment under this Contract of the Contract Price will be made by electronic transfer and prior to submitting any invoices under Clause 16.3 (*Payment under CP&F*) the Contractor shall register their details (supplier on-boarding) on the Contracting, Purchasing and Finance Electronic Procurement Tool ("CP&F").
- 16.3 Where the Contractor submits an invoice to the Authority in accordance with Clause 16.2 (*Payment Under CP&F*), the Authority will consider and verify that invoice in a timely fashion.
- 16.4 The Authority shall, subject to Clause 18 (*Disputed Amounts*), pay the Contractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 16.5 Where the Authority fails to comply with its obligations in Clause 16.3 (*Payment under CP&F*) and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 16.4 (*Payment under CP&F*) only (and not further or otherwise) after a reasonable time has passed.
- 16.6 Neither:
- 16.6.1 the approval for payment of a valid and undisputed invoice by the Authority; or
- 16.6.2 a failure by the Authority to comply with its obligations in Clause 16.3 (*Payment under CP&F*) which ultimately results in an invoice being

regarded as valid and undisputed (for the purposes of and in the circumstances described in Clause 16.5 (*Payment under CP&F*)),

shall be construed as acceptance by the Authority of the performance of the Contractor's obligations or as a waiver of its rights and remedies either under this Contract or otherwise.

**17 Unique Identifiers**

- 17.1 Having regard to and subject to Clause 16 (*Payment under CP&F*), the Authority and the Contractor shall comply with the provisions of this Clause 17 (*Unique Identifiers*).
- 17.2 For CP&F purchase orders, the contract 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.
- 17.3 For EBC Contractor logistic support contracts, the Contractor will generate EUPIs in fulfilling demands raised under a Contractor logistic support contract. An EUPI applies for each package and the Contractor must quote it in any communication concerning a package. Where a delivery includes more than one package, each package must have a separate EUPI.
- 17.4 Confirmation of a receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) or any other term of this Contract relating to acceptance by the Authority.

**18 Disputed Amounts**

- 18.1 The Authority may withhold payment of any amount it believes, acting reasonably, the Contractor is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount. The Authority shall notify the Contractor of the reasons for withholding the Disputed Amount (together with supporting evidence) on or before the day on which the Disputed Amount would (but for this Clause 18.1 (*Disputed Amounts*)) otherwise fall due.
- 18.2 The Authority shall pay any undisputed amounts on or before the day on which they fall due.
- 18.3 Within ten (10) Working Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 18.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, the Authority shall be entitled:
- 18.3.1 to retain on a permanent basis any amounts withheld pursuant to Clause 18.1 (*Disputed Amounts*); and



- 18.3.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, and reserves the right to claim interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.
- 18.4 If the Contractor responds pursuant to Clause 18.3 (*Disputed Amounts*) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 18.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under the Dispute Resolution Procedure.
- 18.5 If the determination of any Dispute conducted pursuant to Clause 18.4 (*Disputed Amounts*) shows that:
- 18.5.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or
- 18.5.2 the Contractor has claimed under Clause 16 (*Payment under CP&F*) any amount which it was not entitled to be paid,

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

**19 Payment of Bills using the Bankers Automated Clearing Service System**

- 19.1 The Authority shall make payment to the Contractor of all valid claims submitted for payment in accordance with Clause 16 (*Payment under CP&F*) by means of the Bankers Automated Clearing Service ("BACS") directly into the Contractor's nominated bank account. To facilitate payment by means of the BACS system, the Contractor shall provide the Authority in advance of the submission of valid claims, if it has not already done so, details of the name and address of its bank, the sort code and account number.

**20 Recovery of Sums Due**

- 20.1 Whenever, under this Contract, any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under this Contract, or under any other contract with the Authority or with any Government Department.
- 20.2 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under this Contract or under any other contract with the Authority, or with any other Government Department.

**21     VAT**

- 21.1 All sums payable under this Contract exclude any UK output VAT (and any similar EU or non-EU taxes) chargeable on the provision of the Contractor Deliverables by the Contractor to the Authority.
  
- 21.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily for UK VAT purposes) in respect of its business activities at the time of any provision, and the circumstances of any provision are such that the Contractor is liable to pay the tax due to HM Revenue and Customs ("HMRC"), the Authority shall pay to the Contractor, in addition to the Contract Price (or any other sum due to the Contractor), a sum equal to the output VAT chargeable on the tax value of the provision of the Contractor Deliverables, and all other payments under this Contract according to the law at the relevant tax point.
  
- 21.3 The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its client relationship manager or the HMRC enquiries desk (and not the Authority's Representative) in cases of doubt. The Contractor shall notify the Authority's Representative of the Authority's VAT liability under this Contract and any changes to it within twenty (20) Working Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority's Representative may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC. The Contractor shall promptly comply with any such Authority requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Working Days of receiving such ruling unless it proposes to challenge such ruling. Where the Contractor challenges such ruling it shall supply to the Authority a copy of the final decision issued by HMRC on completion of the challenge within three (3) Working Days of receiving such decision.
  
- 21.4 Where the provision of the Contractor Deliverables comes within the scope of VAT, but the Contractor is not required by VAT law to be registered for 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 Contractor Deliverables. The Contractor shall be responsible for ensuring that it takes into account any changes in VAT Legislation and VAT law regarding registration.
  
- 21.5 Where the Contractor Deliverables are deemed to be provided to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for turnover or similar tax. In that event, the Authority shall pay to the Contractor, in addition to the Contract Price (and any other sum due to the Contractor under this Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) Working Days of a written request for payment of any such sum by the Contractor.
  
- 21.6 In relation to the Contractor Deliverables supplied under this Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt

that the Contractor has complied with this requirement either Party may resolve this matter by reference to the Dispute Resolution Procedure.

- 21.7 Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 21.2 (VAT), the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment and/or penalties directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Working Days of a written request from the Authority's Representative for such correspondence.

## **PART 5 - PERFORMANCE AND REMEDIES**

### **22 Key Performance Indicators and Governance and Management**

- 22.1 The Parties shall comply with the provisions of Schedule K (*KPIs*) and Schedule L (*Governance*).
- 22.2 Without prejudice to Schedule K (*KPIs*) and Schedule L (*Governance*), the Authority, the Authority's Representative and any agents or consultants of the Authority (such agents and consultants to be subject to the Contractor's consent, not to be unreasonably withheld or delayed) may, between the hours of 8:30 am to 17:30 pm on any Monday to Friday (which is a Working Day (under limb (a) of that definition) and with reasonable prior notice (having regard to any co-location working which the Contractor hereby confirms will require a short notice period of no more than one (1) hour), undertake inspection of any of the Contractor Deliverables, and make any audit or check of any aspect of the Contractor's performance of this Contract as required by the Authority or where the same shall have been requested by the National Audit Office. The Contractor shall promptly provide all reasonable co-operation in relation to any inspection, audit or check.
- 22.3 Without prejudice to Clause 22.2 (*Key Performance Indicators and Governance and Management*), the Authority may undertake its own performance monitoring at any time for any purpose in relation to this Contract (and for any UK Government purposes as requested by the Authority from time to time with the consent of the Contractor (such consent not to be unreasonably withheld or delayed)), including in order to ensure that the Contractor Deliverables are being provided in accordance with this Contract.
- 22.4 The Contractor shall meet with the Authority on a periodic basis as set out in Schedule L (*Governance*), to formally discuss the performance and other aspects of this Contract.
- 22.5 Discussions and decisions taken at such meetings which make a change to this Contract shall have no contractual effect unless agreed by both Parties and incorporated in accordance with Clause 84 (*Change*) or Clause 87 (*Change of Control*). The Contractor shall not act on any contract amendment discussed at any meeting without authorisation from the Authority and the Authority shall not be held liable for any such action by the Contractor in anticipation of any authorisation and any related cost, however incurred, if formal authorisation is not provided.

- 22.6 Ad-hoc meetings may be called by either Party throughout the Contract Period where a specific need arises. Agreement to attend such meetings shall not be unreasonably withheld.
- 22.7 The Contractor shall provide the Contract Data Deliverables including the relevant management information identified therein in accordance with the requirements of Schedule B1 (*Contract Data Deliverables*). The Authority may reject a Contract Data Deliverable which does not comply with this Contract. Where the Authority rejects any Contract Data Deliverable, the Contractor shall resubmit it in accordance with this Contract within such period as is specified by the Authority.
- 22.8 The submission by the Contractor and receipt by the Authority of any Contract Data Deliverables or reports on the progress of this Contract shall not prejudice any rights or obligations of either Party under this Contract.

**23 Technical Assistance to the Authority**

- 23.1 The Contractor acknowledges that the Authority:

23.1.1 may (from time to time) use the services of personnel from other Government Departments to assist with managerial, technical and/or other support in relation to this Contract and/or the FTUAS Programme; and

23.1.2 may (from time to time) use the services of specialist commercial organisations to provide managerial, technical and/or other support in relation to this Contract, the UAS and/or the FTUAS Programme,

and the Contractor agrees that, in such circumstances, such personnel and such organisations shall be deemed to be approved representatives of the Authority and the Contractor shall make available such information (and/or consents to such information being made available (as the case may be) to such personnel and such organisations) and/or facilities as are necessary to enable such personnel and/or such organisations to fulfil their obligations to the Authority.

**24 GFX Failures**

- 24.1 If and to the extent that a GFX Failure is the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in Schedule K (*KPIs*), then subject to Clause 24.2 (*GFX Failures*) the Contractor is entitled, save where the GFX Failure has been caused by any act or omission of the Contractor or any Contractor Related Party under this Contract to apply for relief from those of its obligations that it is unable to perform as a direct result of such GFX Failure. If such act or omission of the Contractor or any Contractor Related Party has contributed to the GFX Failure, the Contractor's entitlement to relief shall be reduced by an amount proportional to such contribution to the GFX Failure.

- 24.2 To obtain relief pursuant to Clause 24.1 (*GFX Failures*) the Contractor shall:

24.2.1 as soon as practicable, and in any event within twenty (20) Working Days after it became aware that the GFX Failure has adversely affected or is likely to adversely affect the ability of the Contractor to provide the

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- Contractor Deliverables or to perform its obligations, give to the Authority a notice of its claim for relief from its obligations under this Contract; and
- 24.2.2 as soon as practicable and in any event within ten (10) Working Days of service on the Authority of the notice referred to in Clause 24.2.1 (*GFX Failures*) notify the Authority of full details which are available in respect of the GFX Failure and the relief claimed;
- 24.2.3 demonstrate to the reasonable satisfaction of the Authority that:
- (i) the GFX Failure was the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in Schedule K (*KPIs*); and
  - (ii) the relief claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
- 24.2.4 continue to perform its obligations under this Contract subject to the constraints of the GFX Failure.
- 24.3 If and to the extent that the Contractor has complied with its obligations under this Clause 24 (*GFX Failures*), then:
- 24.3.1 the Authority shall not be entitled to exercise its rights arising as a result of the GFX Failure to terminate this Contract; and
- 24.3.2 the Authority shall give the Contractor such relief from its obligations as the Authority considers is reasonable for such a GFX Failure, provided always that where the Authority is able to assist to mitigate the GFX Failure (which may include requiring the Contractor to obtain a replacement for the relevant GFX or varying the Contractor Deliverable so as to reduce and/or eliminate the impact of the GFX Failure) and elects to do so by notice in writing to the Contractor, the Contractor shall accept such requirement or variation. In the event that the Contractor is required to obtain a replacement for the relevant GFX it shall be reimbursed any reasonable additional costs, reasonably incurred (on the production of satisfactory evidence of such expenditure) in connection with the acquisition of such replacement GFX.
- 24.4 The Contractor shall notify the Authority if at any time it realises or becomes aware of any information relating to the GFX Failure, giving details of that information, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 24.5 If the Parties cannot agree the extent of any relief from the Contractor's obligations under this Contract or the Authority disagrees that any GFX Failure has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause 24 (*GFX Failures*) the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

- 24.6 The Contractor shall not be entitled to any common law or equitable rights (including rights to damages or to any other rights under contract, tort or otherwise) in relation to the occurrence or subsistence of any GFX Failure.

**25 Diversion Orders**

- 25.1 For the purposes of this Clause 25 (*Diversion Orders*), "**Diversion Orders**" are defined as requests for the urgent delivery of specified quantities of Contractor Deliverables to consignees other than that stated in this Contract.
- 25.2 The Authority shall notify the Contractor at the earliest practicable opportunity it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
- 25.3 The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
- 25.4 The Authority reserves the right to cancel the Diversion Order.
- 25.5 If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the representative of the Authority who issued it for clarification and/or further instruction.
- 25.6 If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of this Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.
- 25.7 The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to this Contract in accordance with Clause 84 (*Change*). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

**26 Indemnity and Liabilities**

- 26.1 Not Used.

**Limitation on Liability**

**Unlimited liability**

- 26.2 Neither Party limits its liability for:
- 26.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
  - 26.2.2 fraud or fraudulent misrepresentation by it or its employees;

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- 26.2.3 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
- 26.2.4 any liability to the extent it cannot be limited or excluded by law.
- 26.3 The financial caps on the Contractor's liability set out in Clause 26.4 below shall not apply to any indemnity given by the Contractor to the Authority under this Contract or breach by the Contractor of Clause 38 (*Protection of Personal Data*) and Data Protection Legislation.

Financial limits

- 26.4 Subject to Clauses 26.2 and 26.3 and to the maximum extent permitted by law:
- 26.4.1 throughout the Contract Period the Contractor's total liability in respect of losses that are caused by Contractor Defaults shall in no event exceed:
- (i) in respect of Clause 49 (*The Contractor's Property and Personnel at Government Establishments*) [REDACTED] in aggregate;
  - (ii) in respect of Clauses 78.15 and 78.16 (*Material Breach*) [REDACTED] in aggregate;
  - (iii) in respect of Clause 60 (*Issued Property*) [REDACTED] in aggregate; and
  - (iv) in respect of Clause 62 (*Loss of or Damage to the Articles*) [REDACTED] in aggregate.
- 26.4.2 without limiting Clause 26.4.1 and subject always to Clauses 26.2, 26.3 and 26.4.3, the Contractor's total liability throughout the Contract Period in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be [REDACTED] in aggregate.
- 26.4.3 upon the extension to the Contract Period, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 26.4.1 and 26.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Contract Period, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 26.4.1 and 26.4.2 of this Contract.
- 26.5 Subject to Clauses 26.2, 25.3 and 26.6, 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 Contract Price paid by the Authority in the relevant contract year in respect of any and all claims in that contract year.

- 26.6 Clause 26.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Contract Price.

Consequential loss

- 26.7 Subject to Clauses 26.2, 26.3 and 26.8, 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:

- 26.7.1 indirect loss or damage;
- 26.7.2 special loss or damage;
- 26.7.3 consequential loss or damage;
- 26.7.4 loss of profits (whether direct or indirect);
- 26.7.5 loss of turnover (whether direct or indirect);
- 26.7.6 loss of business opportunities (whether direct or indirect); or
- 26.7.7 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.

- 26.8 The provisions of Clause 26.7 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 Contractor Default:

- 26.8.1 any additional operational and administrative costs and expenses arising from the Contractor Default, including any costs paid or payable by the Authority:
  - (i) to any third party;
  - (ii) in relation to deliverables that are reliant on the Contractor Deliverables;
  - (iii) and relating to time spent by or on behalf of the Authority in dealing with the consequences of the Contractor Default;
- 26.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor Default, including wasted management time;
- 26.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Contract Period and any option period or agreed extension to the Contract Period (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);



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- 26.8.4 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;
- 26.8.5 damage to the Authority's physical property and tangible assets, including damage under Clause 49 (*The Contractor's Property and Personnel at Government Establishments*) and Clause 60 (*Issued Property*);
- 26.8.6 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;
- 26.8.7 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 Contractor Default (including the extension or replacement of such contracts);
- 26.8.8 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
- 26.8.9 any savings, discounts or price reductions during the Contract Period and any option period or agreed extension to the Contract Period committed to by the Contractor pursuant to this Contract.

Invalidity

- 26.9 If any limitation or provision contained or expressly referred to in this Clause 26 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 26.

Third party claims or losses

- 26.10 Without prejudice to any other rights or remedies the Authority may have under this Contract, the Authority shall be entitled to make a claim under this Contract against the Contractor 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:
  - 26.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
  - 26.10.2 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 Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

- 26.11 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.

**27 Insurances**

- 27.1 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule P (*Required Insurances*) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule P (*Required Insurances*) and any other insurances required by law (together the "**Required Insurances**"). The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 27.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 27.3 Where specified in Schedule P (*Required Insurances*), the Contractor shall ensure that the relevant policy of insurance shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Contract.
- 27.4 The Contractor shall not (and the Contractor shall procure that none of its Sub-Contractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 27.5 If the Contractor is in breach of Clause 27.2 (*Insurances*), the Authority may elect, but shall not be obliged, to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 27.6 The Contractor shall, upon the date of this Contract and within fifteen (15) Working Days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet the requirements of this Clause 27 (*Insurances*) and Schedule P (*Required Insurances*). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 27.6 (*Insurances*) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.

- 27.7 The Contractor shall notify the Authority at least ten (10) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- 27.8 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Contractor Deliverables and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Contractor Deliverables or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including providing information and documentation in a timely manner.
- 27.9 Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) after any:
- 27.9.1 incident or circumstances which may give rise to a claim amounting to or in excess of [REDACTED] in connection with this Contract and the Required Insurances; and
- 27.9.2 if the incident or circumstances may give rise to any claim in connection with this Contract which may be in excess of the limits of Required Insurances in Schedule P (*Required Insurances*).
- 27.10 The Contractor shall maintain a written register of all Losses which result in a claim under the Required Insurances in connection with this Contract and shall allow the Authority to review such register at any time.
- 27.11 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 27.12 Where any Required Insurance referred to in Schedule P (*Required Insurances*) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

**28 States of Emergency, Periods of Tension, Transition to War and Hostilities**

- 28.1 The Contractor shall continue to provide the Contractor Deliverables required in peace, during any state of emergency (whether or not involving hostilities), periods of tension, in transition to war, during hostilities and in any period of surge. The Contractor shall provide all the Contractor Deliverables throughout such period of the state of emergency, tension, transition to war or hostility unless directed otherwise by the Authority. The Authority shall advise the Contractor of any changes or additions to the Contract requirements and the provisions of Clause 84 (*Change*) shall apply, provided that the agreement or determination of any Change pursuant to Clause 84 (*Change*) shall not relieve the Contractor of its obligation to comply with the Authority's directions under this Clause 28 (*States of Emergency, Periods of Tension, Transition to War and Hostilities*) in the period up to the agreement or determination of such Change.

**29     Force Majeure**

29.1     A Party (the "**Affected Party**") shall not be in breach of the Contract, nor liable for late or non-performance of any of its obligations under the Contract, if such delay or failure results from a "**Force Majeure Event**". For the purposes of the Contract a Force Majeure Event is defined as one of the following:

29.1.1     acts of nature;

29.1.2     war;

29.1.3     hostilities; and/or

29.1.4     fire at any of the Affected Party's premises or those of its sub-contractors except to the extent that the fire was caused by the Affected Party's own negligence or that of its sub-contractors.

29.2     The Affected Party shall immediately notify the other Party in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Affected Party's obligations under the Contract and the actions proposed to mitigate its effect.

29.3     Subject to Clause 29.4 (*Force Majeure*) below, the Affected Party shall be entitled to an appropriate extension of time for performing any obligations in the Contract to the extent the Affected Party is not able to perform them due to the Force Majeure Event, provided always that the Affected Party has used, to the satisfaction of the other Party, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under the Contract.

29.4     If the occurrence of the Force Majeure Event:

29.4.1     prevents the Contractor from performing its obligations under the Contract for a period of sixty (60) Working Days; or

29.4.2     an extension of time granted pursuant to Clause 29.3 reaches a duration of sixty (60) Working Days,

the Authority may, on giving written notice to the Contractor, terminate the Contract (in whole or in part) with immediate effect and Clause 80 (*Financial Consequences of Termination*) shall apply.

**30     War Risk Indemnity**

30.1     In this Clause 30 (*War Risk Indemnity*):

30.1.1     the expression "**War Risks**" means risks in respect of which the Contractor's policy of insurance contains an exclusion or limitation upon claims applicable by reason of a War Risk Exclusion Clause;

30.1.2     the expression "**War Risk Exclusion Clause**" means a provision in the Contractor's policy of insurance excluding or limiting claims by the Contractor by reference to activities that include war, invasion, acts of

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foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power and attempts at usurpation of power or activities of a similar nature.

30.2 Notwithstanding any other provisions of this Contract, but subject to the provisions of this Clause, the Authority shall indemnify the Contractor in respect of the liabilities, losses, payments and damage described in sub-Clauses 30.2.1 to 30.2.10, where and to the extent that such liabilities, losses, payments or damage are directly attributable to a War Risk and the involvement or requirement for the involvement, for the purpose of work under the Contract of any employees or property of the Contractor in circumstances to which the War Risk Exclusion Clause applies:

- 30.2.1 all liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Contractor by employees of the Contractor, their dependants, executors or administrators, in respect of death, injury, sickness, capture or detention of the Contractor's employees, or loss of or damage to employee's property, and against all costs and expenses reasonably incurred in respect of such claims and proceedings;
- 30.2.2 all liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Contractor by third parties (other than the Contractor's employees) arising from the acts or omissions of the Contractor's employees;
- 30.2.3 any loss of or damage to property of the Contractor, and the loss of use of such property, including any payment made in respect of the necessary hire of suitable property required for performing the
- 30.2.4 contract or other activity dependent on such property pending the return, replacement or repair of such property, but excluding loss of profit;
- 30.2.5 any reasonable payment made to any employee or their dependants, executors or administrators ordinarily payable in respect of absence from work as a result of injury, sickness, capture or detention, or other reasonable allowance or compensation or gratuity where such payment was necessarily incurred by the Contractor for the purpose of enabling them to perform the Contract and the payment was not otherwise payable as of right or as a matter of discretion under any statutory provision or by reason of length of employment with the Contractor;
- 30.2.6 any reasonable payment made in respect of the hire or employment of suitable staff to replace employees absent from work as a result of injury, sickness, capture or detention, when such replacement staff are necessary for performing the Contract or other activity dependent on the availability of the absent employees, pending their return to work;
- 30.2.7 any payment made, where the Authority has not otherwise made provision (e.g. treatment or transportation provided without charge by the Authority), in respect of:

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- (i) the reasonable costs of treatment of any employee properly prescribed by a qualified medical practitioner; or
  - (ii) reasonable medical repatriation costs; and
  - (iii) reasonable funeral and associated transportation costs;
- 30.2.8 where the Contractor has necessarily incurred a commitment to make such payment for the purpose of enabling them to perform the Contract, and the payment was not otherwise payable as of right or a matter of discretion under the pre-existing terms of the contract of employment of that employee, and that employee's condition would not have arisen by virtue of their employment at their normal place of work;
- 30.2.9 any loss of, or damage to, or loss of use of property of the Authority made available to the Contractor for the purpose of performing the Contract including any payment made in respect of the hire of suitable property necessary for performing the Contract or other activity dependent on such property pending the return, replacement and/or repair of such property but excluding loss of profit;
- 30.2.10 any additional payments reasonably incurred to maintain the insurance cover referred to in Clause 30.3.1 below and expressly required by reason of performance of the Contract.
- 30.3 The Authority shall not indemnify the Contractor in respect of any claim, proceedings, cost, expense, payment, loss or damage which arises from
  - 30.3.1 any risks in respect of which the Contractor is insured ;
  - 30.3.2 any risks which, although uninsured, the Contractor could reasonably have been expected to have been able to insure;
  - 30.3.3 malicious acts, acts of sabotage, strikes, riots, civil commotion or labour disturbances other than where such activities occur in support of or as a direct result of activities described in Clause 30.1.2 above;
  - 30.3.4 performance of the Contract within the Territories listed at Schedule 1.to DEFCON 661;
  - 30.3.5 wilful misconduct, lack of good faith, or negligence on the part of the Contractor, their officers, servants or agents;
  - 30.3.6 the wilful disregard of instructions properly given to employees (including but not limited to officers, servants or agents) of the Contractor by the Authority (who for the purposes of this Clause shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);
  - 30.3.7 activities undertaken by the Contractor, their officers, servants or agents for purposes other than performance of the Contract except where those activities are in compliance with instructions properly given to employees of

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the Contractor by the Authority (who for the purposes of this Clause shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);

- 30.3.8 use of any property of the Contractor, their officers, servants or agents for purposes other than performance of the Contract except where such use is in compliance with instructions properly given to employees of the Contractor by the Authority (who for the purposes of this Clause shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);
  - 30.3.9 activities undertaken by the Contractor, their officers, servants or agents which contravene any code of conduct or similar guidance issued by the Authority for the purposes of defining the Authority's reasonable expectations of the conduct of the Contractor, their officers, servants or agents in the theatre of operations; or
  - 30.3.10 payments of any nature whatsoever to pension funds or schemes operated by or on behalf of the Contractor or any Subcontractor, or any fund or scheme relating to an individual officer, servant or agent of the Contractor, including but not limited to lump sum death benefit, pension payment, compensation payment or redundancy payment.
- 30.4 The Authority shall not indemnify the Contractor in respect of any claims, proceedings, costs, expense, payments, loss or damage for which the Contractor has made provision, other than for insurance cover, in the Contract Price (either as a direct charge, indirect charge or contingency).
- 30.5 Where the Contractor and the Contractor's insurer under the Contractor's policy of insurance in respect of property or third party liability are connected persons, the Authority shall not indemnify the Contractor under this Condition save and to the extent that the Contractor can demonstrate to the Authority's satisfaction that any endorsement, restriction, limitation or excess or cancellation made in relation to such policy that has the effect of limiting or excluding liability for any risk indemnified under this Condition is in accordance with decisions ordinarily and usually made in the relevant insurance market.. Any question whether the Contractor and their insurer are connected persons shall be determined in accordance with the provisions for determining such question that are set out in section 839 of the Income and Corporation Taxes Act 1988.
- 30.6 Subject to any Subcontractor of the Contractor observing and performing the terms of Clause 30.8, such Subcontractor shall be entitled to the benefit of and to enforce this Clause 30 (*War Risk Indemnity*) as if they were the Contractor.
- 30.7 It is a pre-condition to any liability of the Authority under this indemnity that the Contractor shall:
- 30.7.1 as soon as reasonably practicable notify the Authority of any occurrence, claim or proceedings that may be expected to give rise to liability of the Authority under this Clause 30 (*War Risk Indemnity*);

- 30.7.2 provide evidence or proof of any claim, proceeding, cost, expense, loss or damage in the manner and form reasonably requested by the Authority; and
- 30.7.3 promptly furnish to the Authority copies of all pertinent papers received by the Contractor and which may reasonably be required by the Authority.
- 30.8 The Authority shall make available to the Contractor a copy of the relevant findings of any military Board of Inquiry into any matter which gives rise to a liability on the Authority under this Clause 30 (*War Risk Indemnity*).

## PART 6 - INFORMATION PROVISIONS

### 31 Authority Data

31.1 For the purposes of this Clause 31 (*Authority Data*), "**Authority Data**" means:

31.1.1 the data, text, drawings, diagrams or images (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:

- (i) which are supplied to the Contractor by or on behalf of the Authority; or
- (ii) which the Contractor is required to generate, process, store or transmit and which are material to the performance of this Contract; or

31.1.2 any Personal Data for which the Authority is the Controller,

provided that, for the avoidance of doubt, the term Authority Data does not imply any ownership rights in any Authority Data pursuant to this Clause 31 (*Authority Data*).

- 31.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 31.3 The Contractor shall not store, copy, disclose, modify, adapt or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract (and in accordance with the relevant licence rights set out in Schedule S (*IPR*)) or as otherwise expressly authorised in writing by the Authority.
- 31.4 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format reasonably specified by the Authority from time to time and/or specified in Schedule A (*Contractor's Obligations*) (in each case at no additional cost to the Authority).
- 31.5 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 31.6 The Contractor shall perform secure back-ups of all electronic Authority Data held on the Contractor's IT systems and shall ensure that up-to-date back-ups are stored in



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accordance with Good Industry Practice and the Contractor shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure back-ups of all electronic Authority Data held on the Sub-Contractor's IT systems. The Contractor shall ensure that such back-ups are made 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 six (6) monthly intervals (or such other intervals as may be agreed by the Parties in writing).

- 31.7 The Contractor shall ensure that any electronic system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 31.8 If the Authority Data is corrupted, lost or sufficiently degraded so as to be unusable as a result of the Contractor's failure to fulfil its obligations under this Contract and/or exercise reasonable skill and care, the Authority may:
- 31.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
- 31.8.2 itself restore or procure the restoration of Authority Data in any manner reasonably available to it, and shall be repaid by the Contractor any reasonable expenses incurred directly in doing so.
- 31.9 If at any time the Contractor 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 Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

**Malicious Software**

- 31.10 The Contractor shall, as an enduring obligation throughout the term of this Contract and without prejudice to its obligations in Schedule A (*Contractor's Obligations*):
- 31.10.1 use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of any Malicious Software in the Contractor System [\*\*\*and/or the FTUAS System\*\*\*]; and
- 31.10.2 use all reasonable endeavours to ensure that neither it nor any Contractor Related Party introduces any Malicious Software into the Authority System.
- 31.11 Notwithstanding Clause 31.10 (*Malicious Software*), if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses.

31.12 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 31.11 (Malicious Software) shall be borne by the Parties as follows:

31.12.1 by the Contractor where such Malicious Software has been introduced:

- (i) by the Contractor and/or any Contractor Related Party, including where such Malicious Software originates from the Contractor System, [\*\*\*the FTUAS System,\*\*\*] any Third Party software supplied by the Contractor or the Authority Data (whilst the Authority Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Contractor; or
- (ii) by a Third Party as a result of a security vulnerability in the Contractor System, [\*\*\*the FTUAS System\*\*\*] or any Third Party software supplied by the Contractor and/or a failure by the Contractor to comply with Clause 31.10 (*Malicious Software*); and

31.12.2 otherwise by the Authority.

**32 Not Used**

**33 The Contractor's Records**

33.1 The Contractor shall (and shall procure that its Sub-Contractors shall) at all times, and in accordance with Good Industry Practice, maintain all records in the possession, custody or control of the Contractor (or the Sub-Contractor (as the case may be)) relating to this Contract and the provision of the Contractor Deliverables (without prejudice to any other express provisions in this Contract relating to such information):

- 33.1.1 of all incidents relating to health, safety, the environment and security which occur during the Contract Period to the extent that the Authority is not legally obliged to do so as owner of the Authority Sites;
- 33.1.2 of all claims made by a Third Party against either Party that are submitted to the Contractor and/or a Sub-Contractor in connection with this Contract;
- 33.1.3 of all claims made under any policy of insurance that the Contractor is required to maintain pursuant to Clause 27 (*Insurances*);
- 33.1.4 of all Disputes dealt with pursuant to the Dispute Resolution Procedure that arise during the Contract Period;
- 33.1.5 of all certification and/or authorised documentation relating to the attainment of Necessary Consents, Third Party quality standards and/or evidence of compliance with any specified Def Stan requirements;
- 33.1.6 relating to hazardous substances pursuant to Clause 56 (*Supply of Hazard Data*); and

33.1.7 any of the Contractor owned Intellectual Property Rights, the Contractor's use of Authority owned Intellectual Property Rights and records relating to applicable Third Party Intellectual Property Rights,

(the "**Records**") and without prejudice to Clause 35 (*Disclosure of Information*) and Clause 41 (*Intellectual Property Rights*) make the Records available to be examined and if necessary, copied, by or on behalf of the Authority, as the Authority may reasonably require when requested upon reasonable notice.

33.2 The Authority shall be entitled to disclose the Records set out in Clause 33.1 (*The Contractor's Records*) to potential Follow-On Contractors as the Authority may reasonably require.

33.3 The Records shall be retained for a period of at least six (6) years from:

33.3.1 the end of the Contract Period; or

33.3.2 the final payment,

whichever occurs latest.

#### **34 SME Spend Data Collection**

34.1 In this Clause 34 (*SME Spend Data Collection*), the following words and expressions shall have the following meanings given to them:

34.1.1 "**Reporting Date**" means 31 March (or such alternative date agreed between the Parties (acting reasonably) in writing having regard for the end date of the Contractor's financial year) each year of the Contract Period;

34.1.2 "**Revenue**" means the aggregate revenue (excluding VAT and before the application of any deduction, set-off or other remedy) that the Contractor has received under this Contract with the Authority;

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

34.1.4 "**Sub-Contractor Revenue**" means the aggregate revenue (excluding VAT and before the application of any deduction, set-off or other remedy) that any Sub-Contractor has been paid by the Contractor under a Sub-Contract; and

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

34.2 The Contractor shall by 30 June (or such alternative date agreed between the Parties (acting reasonably) in writing having regard for the end date of the Contractor's financial year)) of each year during the Contract Period at no additional cost, charge and expense to the Authority provide to the Authority the information identified in

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DEFFORM 139 (as amended by the Authority from time to time and with each such amended version taking effect in accordance with Clause 34.4 (*SME Spend Data Collection*)), including:

- 34.2.1 the total Revenue on and prior to the Reporting Date in respect of the relevant financial year immediately prior to the Reporting Date;
  - 34.2.2 the total value of Sub-Contractor Revenue paid under this Contract in respect of the relevant financial year immediately prior to the Reporting Date; and
  - 34.2.3 the total value of Sub-Contractor Revenue paid to SMEs and VCSEs in respect of the relevant financial year immediately prior to the Reporting Date.
- 34.3 The Authority may issue from time-to-time guidance to the Contractor in relation to the completion of DEFFORM 139 (and the Contractor shall not unreasonably refuse to comply with any such guidance so issued when completing such DEFFORM and complying with this Clause 34 (*SME Spend Data Collection*)).
- 34.4 The Authority may at any time during the Contract Period change the reporting template in DEFFORM 139, provided that the Authority shall have given a minimum of thirty (30) days' notice in writing of the scope and nature of such change or changes. The changes may include the data required or format of the report or both. The Parties agree that no such change shall constitute a formal amendment of this Contract.
- 34.5 Notwithstanding the requirements of Clause 33 (*The Contractor's Records*), the Contractor shall retain the information identified in Clause 34.2 (*SME Spend Data Collection*) and supporting records for a period of twenty-four (24) months commencing on the date of their provision pursuant to Clause 34.2 (*SME Spend Data Collection*).

**35 Disclosure of Information**

- 35.1 Subject to Clauses 35.1 to 35.8 (inclusive) (*Disclosure of Information*), each Party:
- 35.1.1 shall treat in confidence all Information it receives from the other;
  - 35.1.2 shall not disclose any of that Information to any Third Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract;
  - 35.1.3 shall not use any of that Information otherwise than for the purpose of this Contract; and
  - 35.1.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.
- 35.2 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract: