

05 October 2018

THE SECRETARY OF STATE FOR DEFENCE

and

QINETIQ LTD

**THE ENGINEERING DELIVERY PARTNER
AGREEMENT**

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THIS ENGINEERING DELIVERY PARTNER AGREEMENT is made on 5 October 2018

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the "**Authority**"); and
- (2) **QINETIQ LIMITED** a company incorporated in England and Wales (Company registration number 03796233) whose registered office is at Cody Technology Park, Ively Road, Farnborough, Hampshire GU14 0LX (the "**Contractor**");

RECITALS:

- (A) The Authority is undergoing transformation of the way it delivers its Engineering Services and in order to support this objective ran a competitive process to identify a preferred supplier to be the Engineering Delivery Partner.
- (B) Accordingly, the Authority has selected the Contractor as its Engineering Delivery Partner to support the transformation of the delivery of Engineering Services through effective collaboration, continuous improvement and innovation ("the EDP Programme"). This aim is enshrined in a jointly agreed Mission and Vision.
- (C) The Contractor has formed the Aurora Engineering Partnership with Atkins Limited and BMT Defence and Security UK Limited (Atkins and BMT together the 'Aurora Partner Sub-contractors'). In order to deliver the EDP Programme, the Contractor intends to on or about the date of this Agreement enter into a Consortium Agreement and place sub-contracts with the Aurora Partner Sub-contractors ('Aurora Partner Sub-contracts').
- (D) The Authority has introduced governance arrangements and controls to maximise throughput for the delivery of all in-scope Engineering Services as described in Schedule A.

IT IS AGREED:

In consideration of the payment of the sum of one pound (£1.00) receipt of which the Contractor acknowledges, the Contractor agrees to enter into this Agreement.

PART I – CORE CLAUSES

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement (including the Recitals, Schedules, Appendices and Annexes) the following terms shall, unless the context otherwise requires, have the meanings ascribed below:

“Acceptance” and **“Accepted”** means acceptance of a Contractor Deliverable by the Authority as defined in Clause 31.1;

“Acceptance Criteria” means as defined in each Approved Tasking Order;

"ADT Commercial Lead" means the Authority Commercial Lead for the Engineering Delivery Partner appointed pursuant to Clause 14.4 (Authority Commercial Lead);

"Agreement" means this agreement, its Schedules and Appendices between the Authority and the Contractor as amended or supplemented in accordance with its terms from time to time;

"Agreement Commencement Date" means the date on which the Agreement is signed in Clause 4.1 (Agreement Commencement Date);

"Allowable Costs" means allowable costs as determined in accordance with the SSCR Principles;

"Applicable Laws" means all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes in the UK and any other relevant jurisdiction and all judgements, orders, notices, instruments, decisions and awards of any court or competent authority or tribunal which change a binding precedent or a previous interpretation of legislation and all codes of practice having force of law, statutory guidance and policy notes in the UK and any other relevant jurisdiction;

"Approved Innovation Project" or "AIP" means an Authority Directed Innovation Opportunity or a Contractor Generated Innovation Opportunity that the Innovation Governance Committee has determined should be delivered by the Contractor pursuant to this Agreement through a Part B Task.

"Approved Tasking Order" means an accepted Tasking Form for the delivery of Services pursuant to the process set out in Schedule D (Tasking);

"Articles" means all goods (excluding services) which the Contractor is required under the Agreement to supply;

"Aurora EDP Lead" means the person identified as such in Part II (Contract Management Construct) of Schedule C (Governance and Contract Management) or their replacement, approved in accordance with Clause 0 (Key Personnel) from time to time;

“Aurora Partner Sub-contractors” means Atkins Limited and BMT Defence and Security UK Limited;

“Aurora Partner Sub-contracts” means the sub-contracts placed by the Contractor with Atkins Limited and BMT Defence and Security UK Limited on or about the date of this Agreement;

"Aurora Programme Lead" means the person identified as such in Part II (Contract Management Construct) of Schedule C (Governance and Contract Management) or their replacement, approved in accordance with Clause 0 (Key Personnel) from time to time;

"Aurora Service Delivery Lead" means the person identified as such in Part II (Contract Management Construct) of Schedule C (Governance and Contract Management) or their replacement, approved in accordance with Clause 0 (Key Personnel) from time to time;

"Authority" means the Secretary of State for Defence, acting on behalf of the Crown;

"Authority Break Notice" has the meaning given to it in Clause 5.3 (Authority Right to Break);

"Authority Commercially Sensitive Information" means all Commercially Confidential Information other than (i) Personal Data and sensitive personal data (within the meaning of the DPA) relating to Engaged Personnel; and (ii) information which solely relates to the commercial interests, trade secrets, know-how or other IPR of the Contractor, or any Contractor Related Party;

"Authority Contract" means a contract or a proposal for a contract (however early in development) that is awarded, or potentially to be awarded, by the Authority other than in relation to this Agreement;

"Authority Delivery Team" or **"ADT"** means the delivery team of the Authority responsible for the proactive management of the Authority's obligations under this Agreement;

"Authority Demander" means the Engineering Functional Managers of the Authority responsible for the requisition of Services across the DE&S Engineering Function;

"Authority Directed Innovation Opportunity" or **"ADIO"** has the meaning given to it in Paragraph 5 of Schedule Q (*Innovation*);

"Authority Disclosed Data" means information relating to DE&S, the Competition, the Agreement or the Contractor Deliverables disclosed to the Contractor and the Aurora Partner Sub-contractors and advisers including:

- (a) the Contract Notice;
- (b) the Pre-Qualification Questionnaire;
- (c) the Invitation to Negotiate (ITN);
- (d) information, data and documents in the Data Room; and
- (e) the Clarification Responses;

"Authority Employee Transfer Allegation" has the meaning given to it in Clause **Error! Reference source not found.**;

"Authority Event of Default" means an event of default by the Authority pursuant to Clause 61.5 (Termination by the Contractor for non-payment by the Authority);

"Authority Foreground IPR" means any IPR which vests in the Authority in accordance with the terms of this Agreement;

"Authority IPR" means IPR: (i) owned by the Authority; or (ii) licensed to the Authority and in respect of which the Authority has the appropriate right to either or both disclose or grant sub-licences to third parties (including the Contractor and any Contractor Related Party), but only to the extent to which and subject to the terms and conditions on which the Authority is permitted to grant sub-licences; and includes Authority Foreground IPR;

"Authority's Migration Plan" means the plan detailing the list of Authority Contracts to be migrated to the EDP, with timescales and agreed conditions for the migration;

"Authority Payment System" means the Authority's "Contracting, Purchasing and Finance (CP&F)" electronic procurement tool;

"Authority Proposal" means an amendment to this Agreement proposed by the Authority setting out the reasons for the change, sufficient details to enable the Contractor to calculate the impact of the change on the Services and/or the other terms and conditions of this

Agreement, the date by which the Authority wishes the change to take effect and the basis on which the Authority wishes the change to be priced;

"Authority Related Party" means an officer, employee, representative, agent, adviser or contractor of the Authority or member of the armed forces (in each case acting in such capacity), other than the Contractor and Contractor Related Parties;

"Baseline Profit Rate" means the baseline profit rate determined in accordance with the SSCR Principles as referred to in Schedule F (Payment and Performance Management);

"Business Continuity Plan" means the business continuity plan attached to this Agreement at Schedule M (Business Continuity Plan) as amended from time to time in accordance with the terms of this Agreement;

"Business Day" means any day excluding:

- (1) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;
- (2) privilege days notified in writing by the Authority to the Contractor at least 10 Business Days in advance; and
- (3) such periods of holiday closure of the Contractor's premises of which the Authority is given written notice by the Contractor at least 10 Business Days in advance;

"Code" has the meaning given to it in Clause 84 (*Freedom of Information Act*);

"Change in Law" means the coming into effect after the date of this Agreement of any Applicable Laws which impact on the performance of the Services and which, subject to Clause 17 (Change in Law), were not foreseeable at the Agreement Commencement Date or the date of an Approved Tasking Order;

"COI Compliance Regime" means the conflict of interest compliance regime set out in Schedule G (COI Compliance Regime);

"COI Management Process" has the meaning given to it in Paragraph 1.2 of Schedule G (COI Compliance Regime);

"Commencement Conditions" has the meaning given to it in Clause 4.3 (Commencement Conditions);

"Commercially Confidential Information" means information, (including, in respect of the Contractor, Commercially Sensitive Information) which at the time of disclosure to the receiving Party ought to be considered by the receiving Party as commercially confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests, trade secrets, know-how or other IPR of either Party or any other person and all Personal Data and sensitive personal data (within the meaning of the DPA);

"Commercially Sensitive Information" means the subset of Commercially Confidential Information identified as Commercially Sensitive Information in Schedule H (Contractor's Commercially Sensitive Information);

"Competition" means the competition that led to the appointment of the Contractor under this Agreement (following the issue of the Contract Notice);

"Compliance Agreement" means a conflict of interest compliance agreement entered into between the Authority, Contractor and/or a Contractor Related Party as may be required in accordance with Schedule G (COI Compliance Regime); **"Conflicting Persons"** has the meaning given to it in Paragraph 1.3 of Schedule G (COI Compliance Regime);

"Conflicting Project" has the meaning given to it in Paragraph 1.1 of Schedule G (COI Compliance Regime);

"Consortium Agreement" means the agreement signed on or about the date of this Agreement between the Contractor and the Aurora Partner Sub-contractors which determines the governance, management and operational structure required to implement the strategic objectives and decisions by the Aurora Engineering Partnership and to bid for, and to allocate, new Approved Tasking Orders under this Agreement;

"Continuous Improvement Plan" means the Contractor's plan to continuously improve the Services through the implementation of more efficient and effective methods as set out in Appendix 2 of Schedule C (Governance and Contract Management);

"Contract Data Requirement" means data which is provided by the Authority pursuant to the agreement of an Approved Tasking Order let subject to this Agreement. The terms of such Approved Tasking Order may include assumptions to link the pricing and other terms of the Approved Tasking Order to changes in the underlying provided data;

"Contract Management Meeting" has the meaning given to it in Clause 43 (monthly Contract Reviews);

"Contract Notice" means the OJEU notice in relation to the Competition that was published on 8 December 2017;

"Contract Year" means a period of twelve (12) months commencing on the Agreement Commencement Date or an anniversary of the Agreement Commencement Date;

"Contractor" means the person who, by this Agreement, undertakes to supply the Articles, or perform the Services, or both for the Authority as is provided by the Agreement;

"Contractor Background IPR" means:

- (a) IPR that is owned by or licensed to the Contractor or any Contractor Related Party before the Agreement Commencement Date; and
- (b) IPR that is or has been created, developed or acquired by or licensed to the Contractor or any Contractor Related Party for purposes other than: (i) the Contractor fulfilling its obligations under this Agreement; and (ii) the Contractor Related Party performing the Contractor's obligations under this Agreement;

"Contractor Deliverables" means the Articles, works, goods, Products and / or the Services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Agreement;

"Contractor Delivery Team" or **"CDT"** means the delivery team responsible for the proactive management of the Contractor's obligations under this Agreement appointed by the Contractor to the Engineering Hub Service in accordance with Paragraph 19 (Part C – EDP Contractor Delivery Team) of Schedule A (Requirements) and Part I (Contract Management Construct) of Schedule C (Governance and Contract Management);

"Contractor Delivery Team Personnel" means those employees of the Contractor or Aurora Partner Sub-contractors appointed to the Contractor Delivery Team;

"Contractor Generated Innovation Opportunity" or **"CGIO"** has the meaning given to it in Paragraph 2.1 of Part II to Schedule D (*Tasking Process*);

"Contractor Employee Transfer Allegation" has the meaning given to it in Clause **Error! Reference source not found.**;

"Contractor Event of Default" means each event of default listed in Clause **Error! Reference source not found.** (*Termination for Contractor Event of Default*);

"Contractor's Migration Plan" means the plan detailing the list of contracts of the Contractor and the Aurora Partner Sub-contractors to be migrated to the EDP, with timescales and agreed conditions for the migration as referred to in Clause 5.6 (IOC of the Engineering Delivery Partner);

"Contractor Proposal" means an amendment to this Agreement proposed by the Contractor setting out the reasons for the change, sufficient details to enable the Authority to assess the impact of the change on the Services and/or the other terms and conditions of this Agreement, the date by which the Contractor wishes the change to take effect and the necessary pricing information as required under this Agreement;

"Contractor Related Parties" means one or more of:

- (a) all directors, officers, employees, representatives, agents, contractors, consultants or advisers of the Contractor or of any Aurora Partner Sub-contractor;
- (b) each Aurora Partner Sub-contractor; and
- (c) all sub-contractors of the Contractor or any Aurora Partner Sub-contractor of any tier engaged in the delivery of the Services;

"Contractor's Representative" is the person appointed pursuant to Clause 14.1 (*Contractor's Representative*);

"Contract Quarter" means a period of three calendar months in any twelve month period commencing on the Agreement Commencement Date;

"Controller" has the meaning given to it in the GDPR;

"COTS IPR" means IPR in any commercial off the shelf software and IT products, being software and IT products that are ready-made, readily available for sale or licence and can be used without development;

"Crown" means one or more of Her Majesty's Secretaries of State, another Minister of the Crown, the Lords Commissioners of Her Majesty's Treasury, the Treasury Solicitor, any body corporate wholly owned by any of the foregoing or any other person acting on behalf of the Crown;

"Crown Use" means the use of IPR by the Authority for services of the Crown pursuant to its rights under section 12 of the Registered Designs Act 1949, sections 55-59 of the Patents Act 1977 or sections 240-244 of the Copyright, Designs and Patents Act 1988;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

"Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

"Data Protection Officer" has the meaning given to it in the GDPR;

"Data Room" means the documents (including correspondence and information) made available prior to the date of this Agreement by or on behalf of the Authority for inspection by or on behalf of the Contractor in connection with the Competition;

"Data Subject" has the meaning given to it in the GDPR;

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

"DE&S" means Defence Equipment and Support is a Bespoke Trading Entity, an arm's length body of the Authority;

"DE&S Engineering Function" has the meaning given to it in Paragraph 4 of Schedule A (Requirements);

"DE&S Strategic Waypoints" has the meaning set out in Clause 5.5 (DE&S Strategic Waypoints);

"DE&S Strategic Waypoints Review Meeting" has the meaning set out in Clause 5.5.3 (DE&S Strategic Waypoints);

"DEFCONS" means the defence conditions for use in defence related contracts as published by the Authority from time to time;

"Defence Reform Act" ("DRA") 2014 means the primary legislation applicable to single source procurement;

"DEFFORMS" means the defence forms for use in defence related contracts as published by the Authority from time to time;

"Defence Business Services" ("DBS") means the business service organisation responsible for the delivery of corporate services to the Authority;

"Delivery Fee" has the meaning given to it in Paragraph 7.3 of Schedule Q (Innovation);

"Delivery Partner Performance Committee" means the governance group identified in Part I (Governance) of Schedule C (Governance and Contract Management);

"Delivery Partner Steering Group" means the governance group identified in Part I (Governance) of Schedule C (Governance and Contract Management);

"Delivery Team" means the Authority entity that delivers DE&S projects and are recipients of Engineering Services;

"Demand Signal" means the consolidated view of the Authority's future requirements for Engineering Services over a rolling five year period;

"Dispute" means any dispute, claim, or difference between the Parties (including any question regarding the existence, validity, interpretation or termination of the Agreement) arising in connection with the Services or this Agreement, and any dispute relating to any non-contractual obligations arising out of or in connection therewith;

"Dispute Resolution Procedure" means the procedure for the resolution of disputes set out in Schedule E (*Dispute Resolution Procedure*);

"Disputed Amount" means any part of any payment to which the Authority believes the Contractor is not entitled pursuant to this Agreement;

"Domain" means any of the operational areas from time to time comprising at the date of this Agreement: Land, Fleet, Air, Joint Enablers, Corporate, Submarines across DE&S and the Submarine Delivery Agency (**"SDA"**);

"DPA" means the Data Protection Act 2018;

"EDP" means the Engineering Delivery Partner as defined in Schedule A (Requirements);

"EDP Communications Campaign" means a joint plan of actions for communications to be agreed between the Parties within 1 month of the Agreement Commencement Date;

"EDP Contract Lead" means the person appointed within the Authority Delivery Team who is responsible for the proactive management of the obligations of the Authority obligations under the provisions of this Agreement as they relate to Approved Tasking Orders and as referred to in Schedule C (Governance and Contract Management);

"EDP Programme" has the meaning given to it in Recital (B);

"Employee Liability Information" has the same meaning as in Regulation 11(2) of the Transfer Regulations;

"Employing Sub-contractor" means any Contractor Related Party providing all or any part of the Services who employs or engages any person in providing the Services;

"Engaged Personnel" means the personnel engaged under a Mode 1 Approved Tasking Order or specifically identified in an Approved Tasking Order;

"Engagement" means the period during which Engaged Personnel are delivering the Services, as outlined in an Approved Tasking Order;

"Engineering Function Role Profile" means the role profiles described in Appendix 4 (Engineering Function Role Profiles) to Schedule A (Requirements);

"Engineering Hub" means the joint Authority and Contractor team forming the body which is responsible for managing the delivery of the EDP Programme;

"Engineering Hub Operations Board" means the governance group identified in Part I (Governance) of Schedule C (Governance and Contract Management);

"Engineering Hub Service" means the Contractor portion of the Engineering Hub as described in Part 2 of Schedule A (Requirements);

"Engineering Output Directory" ("EOD") means the Contractor's document that defines the Engineering Services and how the Requirement will be fulfilled;

"Engineering Service Catalogue" ("ESC") means the Authority's document that defines the Authority's scope of engineering activities;

"Engineering Services" means all engineering services and/or outputs as described in the Engineering Output Directory and/or the Engineering Services Catalogue required by the Authority and to be delivered by industry over the term of this Agreement. This definition shall be reviewed at Strategic Waypoints in order to incorporate possible widening of Services to other Authority bodies;

Engineering Services Procurement Strategy means the Authority authored document detailing the Authority plan for how engineering services shall be procured, in particular those elements of engineering services which intend to be completed by the Authority, and those which the Authority intend to be undertaken by industry, reviewed annually and updated from time to time;

"Environmental Information Regulations" means the Environmental Information Regulations 2004;

"EU" means the European Union;

"Exceptional Change" means a formal amendment to an Approved Tasking Order let pursuant to this Agreement involving a change in price or terms and conditions;

"Exit Plan" has the meaning given to it in Clause 63.1.1 (Exit Plan);

"Expiry Date" means the date which is ten (10) years after the Agreement Commencement Date unless and to the extent terminated earlier pursuant to the terms of this Agreement;

"Final Performance Warning Notice" has the meaning given to it in Clause 61.2 (*Remediation and Termination for Poor Performance Breach*);

"FOC Phase" means the period commencing on the date of Strategic Review and expiring on FOC;

"FOIA" or "Freedom of Information Act" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the Information Commissioner's Office from time to time in relation to such legislation;

"Force Majeure Event" means an event which is beyond the reasonable control of a Party which shall include but not be limited to acts of nature, war, hostilities, terrorism, or steps taken by the Authority or any governmental authority in response to or in anticipation of war, hostilities or terrorism, or fire at premises at which Services are being provided and such event or occurrence:

- (a) adversely impacts on the ability of a Party to perform its obligations (in whole or in any material respect) under this Agreement; and
- (b) is outside the reasonable control of the Affected Party and is not attributable to any act of, or failure to take reasonable preventative action by, the Affected Party concerned;

"Full Operating Capability" ("FOC") – means the date on which the Parties declare that the conditions set out in Clause 5.8 (Full Operating Capability of the Engineering Delivery Partner) have been satisfied;

"GDPR" means the EU General Data Protection Regulations (EU) 2016/679;

"Good Industry Practice" means the exercise of that degree of skill, care, diligence, prudence, transparency, co-operation, professionalism and foresight and operating practice, including with respect to safety, security, efficiency and cost-effectiveness, which would reasonably and ordinarily be expected of an appropriately (and where relevant professionally) qualified, skilled and experienced person engaged in the UK (or an appropriate equivalent jurisdiction) in activities of a similar scope and complexity to the Services (where such contractor is seeking to comply with its contractual obligations and all Applicable Laws);

"Government Body" means any department, office, body or agency of the UK Government or the Crown but excluding the Authority;

"Government Furnished Assets" or "GFA" has the meaning given to it in Clause 46 (Government Furnished Assets and Contractor Assets);

"Government Furnished Resource" or "GFR" means Authority personnel loaned to the Contractor in connection with the Agreement by or on behalf of the Authority;

"Government Furnished Information" or "GFI" means information or data issued or made available to the Contractor in connection with the Agreement by or on behalf of the Authority;

"Government Furnished Facilities" or "GFF" means buildings, parts of buildings, sites and other infrastructure issued or made available to the Contractor in connection with the Agreement by or on behalf of the Authority;

"HMRC" means Her Majesty's Revenue and Customs;

"Initial Operating Capability" ("IOC") means the date on which the Parties declare that the conditions set out in Clause 5.6 (Initial Operating Capability of the Engineering Delivery Partner) have been satisfied;

"Innovation Fee" means (as the context requires) either or both of:

- (a) the Mature Fee; or
- (b) the Delivery Fee;

"Innovation Governance Committee" means the committee that considers Authority Directed Innovation Opportunities and Contractor Generated Innovation Opportunities, as further described in Schedule Q (Innovation);

"Insurances" has the meaning given to it in Clause 85.1 (Insurances);

"IOC Phase" means the period commencing on the Agreement Commencement Date and expiring on IOC;

"IPR" or "Intellectual Property Rights" means all trademarks, logos, get-up, trade and business names, domain names, patents, copyright (including copyright in computer programs), database rights, design rights, registered designs, utility models, semi-conductor topography rights, inventions (whether patentable or not), know-how, moral rights, commercially confidential information and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether or not registered or capable of registration, in respect of such rights which are registrable the right to apply for registration and any and all applications for registration and any renewals or extensions of any of the foregoing rights;

"Key Performance Indicator" or "KPI" means the key performance indicators described in Appendix 1 (Key Performance Indicators) to Part II (Performance Management) of Schedule F (Payment and Performance Management);

"Key Personnel" means the roles identified in Table 2 of Part II (Contract Management Construct) of Schedule C (Governance and Contract Management);

"KPI Incentive" has the meaning given to it in Paragraph 3 of Part II (Performance Management) of Schedule F;

KPI Period" has the meaning given to it in Paragraph 2.1 of Part II (Performance Management) of Schedule F (Payment and Performance Management);

"KPI Report" has the meaning given to it in Paragraph 2.1 of Part II (Performance Management) of Schedule F;

"KPI Review Period" means the period from the Agreement Commencement Date until the Expiry Date or Termination Date, whichever occurs first;

"KPI Score" has the meaning given to it in Paragraph 2.2 of Part II (Performance Management) of Schedule F;

"Late Quality and/or Performance Issues" means the Quality and/or Performance Issues that have not been resolved to the satisfaction of the Authority in accordance with Paragraph

6.5 of Part II (Contract Management Mechanics) of Schedule C (Governance and Contract Management), which either:

- (a) became overdue and were resolved during the relevant KPI Period (but excluding any Quality and/or Performance Issues which were overdue on the last Business Day of the previous KPI Period and were resolved in the current KPI Period); or
- (b) remain unresolved on the last Business Day of the relevant KPI Period;

"LED" means the Law Enforcement Directive (Directive (EU) 2016/680);

"Legal Proceedings" means any suit, litigation, claim, action, proceeding, arbitration, administrative proceeding, mediation, adjudication or investigation before any Relevant Authority (save that for the purposes of Clause 10.1 (Contractor Warranties and Representations) it shall only include investigations of which the Contractor is aware, having made all due enquiry);

"Letter of Placement" means a letter signed by each Member of the Engaged Personnel in a form set out in Appendix 1 (Letter of Placement) to Schedule I (Management and Liability for Engaged Personnel);

"Loss" or "Losses" means any cost (including reasonable legal and other professional costs, fees and expenses), expense, loss, damage or destruction, compensation, fine or other liability (including any claims, interest, penalty, applicable VAT and similar taxes or liability for deduction of PAYE tax properly incurred) whatsoever or howsoever incurred and whether direct, indirect or consequential;

Management Information Systems means the on-line tools for monitoring progress of outputs and dependencies (Enterprise On-line), and the Authority's systems (Primavera, P6 and the Authority's benefits tracking system) as amended from time to time;

"Management Issues" means, in relation to any Engaged Personnel, all those matters under the relevant employment contract requiring action, investigation or decisions by the Contractor (or, where relevant, a Contractor Related Party), including appraisals and performance issues; pay reviews and the award of other payments and benefits under the employment contract; periods of annual leave, sick leave or other leave; absence for any other reason; any complaint about the Engaged Personnel (whether or not that would be dealt with under the disciplinary procedure of the Contractor (or, where relevant, a Contractor Related Party)); and any complaint or grievance raised by such Engaged Personnel (whether or not that would be dealt with under the grievance procedure of the Contractor (or, a Contractor Related Party)); termination of employment; and any disciplinary action;

"Material Breach Notice" has the meaning given to it in Clause 61.1.2(Material Breach Notice);

"Mature Fee" has the meaning given to it in Paragraph 7.2 of Schedule Q (Innovation);

"Member of Engaged Personnel" means an individual who is part of the Engaged Personnel;

"Migration Plan(s)" means the Authority's Migration Plan and the Contractor's Migration Plan;

"Milestone" means the milestone or milestones agreed between the Parties under an Approved Tasking Order;

"Mission" means provide leadership across the engineering enterprise in partnership, to drive increased performance and productivity across the full scale of Services, by focussing on outcomes for those on the front line;

“Mode 1” has the meaning described in Part A (Engineering Services) of Part 2 (The Contractor Response to the Engineering Delivery Partner Requirements) of Schedule A (Requirements);

“Mode 2” has the meaning described in Part A (Engineering Services) of Part 2 (The Contractor Response to the Engineering Delivery Partner Requirements) of Schedule A (Requirements);

“Mode 2 Authority Financial Baseline” means the Authority’s modelled cost to enable delivery of the Requirements within the Tasking Form (Part A);

“Mode 3” has the meaning described in Part A (Engineering Services) of Part 2 (The Contractor Response to the Engineering Delivery Partner Requirements) of Schedule A (Requirements)

“Mode 3 Authority Financial Baseline” means the Authority’s modelled cost to enable delivery of the Requirements within the Tasking Form (Part A);

“Mode 4” has the meaning described in Part A (Engineering Services) of Part 2 (The Contractor Response to the Engineering Delivery Partner Requirements) of Schedule A (Requirements);

“Mode of Operation” means as described in Part 2 of Schedule A (Requirements);

“MOD LFE Good Practice Guide” means the DE&S Learning From Experience Strategy, dated December 2015 (Version 2.0) as referred to in Schedule C (Governance and Contract Management);

“New Fair Deal” means the revised Fair Deal policy set out in HM Treasury’s guidance “Fair Deal for staff pensions; staff transfers from central government” issued in October 2013;

“New Provider” means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after termination or expiry of this Agreement;

“Non-Transferring Employee” means any person (other than a Transferring Employee) who immediately prior to commencement of the provision of any Services was employed: (i) by the Authority; or (ii) by any third party retained directly or indirectly by or on behalf of the Authority in relation to the DE&S Engineering Function;

“OJEU” means the Official Journal of the European Union;

“Operating Manual” means the document setting out the processes and procedures for the operational management of the Services, and which document is not intended to create legally binding obligations on the Parties;

“Part A Tasking Process” means the processes set out in the Part I (Part A Tasking Process) of Schedule D (Tasking Process);

“Part B Tasking Process” means the process set out in Part II (Part B Tasking Process) to Schedule D (Tasking Process);

“Parties” means the parties to this Agreement and **“Party”** means either of them;

“Payment Longstop Date” has the meaning given to it in Clause 53.3.3;

“Payment Mechanism” means the provisions of Part I (*Payment*) of Schedule F (*Payment and Performance Management*);

"Performance Indicator(s)" or "PI" has the meaning given to it in Appendix 2 (Performance Indicators) to Part 2 (Performance Management) of Schedule F (Payment and Performance Management);

"Performance Regime" means the KPI and PI management regimes set out in Part II (Performance Mechanics) of Schedule F (Payment and Performance Management);

"Performance Warning Notice" has the meaning given to it in Clause 61.2 (Remediation and Termination for Poor Performance Breach);

"Person" includes any legal or natural person or persons;

"Personal Data" has the meaning given to it in the GDPR;

"Personal Data Breach" has the meaning given to it in the GDPR;

"Personnel Services" means the Services to be performed by Engaged Personnel to fulfil a Mode 1 Approved Tasking Order;

"PI Failure" has the meaning given to it in Paragraph 5.1 (PI Retentions) of Part 2 (Performance Management) of Schedule F (Payment and Performance Management);

"PI Period" means a Contract Quarter;

"PI Report" has the meaning given to it in Paragraph 4.1 (Performance Indicators) of Part 2 (Performance Management) of Schedule F (Payment and Performance Management);

"PI Review Period" means the period from four months after the Agreement Commencement Date until the Expiry Date or Termination Date, whichever occurs first;

"Prescribed Rate" means a rate of five (5) per cent per annum above the Bank of England base rate;

"Pre-mobilisation Checklist" means the check-list as shown in Appendix 3 to Schedule C (Governance and Contract Management), and which shall align to the requirements set out in Schedule A (Requirements) as may be updated from time to time by agreement, albeit that items which require input, information or training to be provided by the Authority to the Contractor shall not be included in the on-boarding checklist unless and until such input, information or training has been provided by the Authority in full;

"Pre-Qualification Questionnaire" means the document of that name issued to Tenderers on 8th December 2017;

"Processor" has the meaning given to it in the GDPR;

"Product" means an item from the Engineering Service Catalogue and the Engineering Output Directory delivered to the Authority in response to an Approved Tasking Order;

"Prohibited Act" shall be defined in DEFCON 520;

"Protective Measures" means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

"Qualifying Defence Contract" ("QDC") means a single source contract which has been assessed, and which meets the criteria for a contract to which the DRA and SSCR must apply;

“QinetiQ LFE Good Practice Guide” means the Contractor learning from experience strategy which is available on the Contractor intranet as referred to in Schedule C (Governance and Contract Management);

"Quality and/or Performance Issue" means any issue in relation to a Member of the Engaged Personnel's performance, conduct, competence or fit with their role or any issue in relation to the quality of the Contractor Deliverables delivered or the performance of the Contractor in delivery of the Contractor Deliverables required in relation to an Approved Tasking Order;

"Receipting" has the meaning given to it in Clause 53.3.5;

"Relevant Authority" means any court or tribunal or other (local, national or supra-national) agency, inspectorate, minister, ministry, official, public or statutory body with jurisdiction in relation to any suit, litigation, claim, action, proceeding, arbitration, administrative proceeding, mediation, adjudication or investigation in the UK, the EU or any other jurisdiction;

"Relevant Month" means the month during which payment of an amount is first claimed by the Contractor pursuant to Clause 52 (Invoicing and Payment);

“Relevant Transfer” means a transfer of the employment of any person who immediately prior to the commencement of the provision of any Services was employed (i) by the Authority; or (ii) by any third party retained directly or indirectly by or on behalf of the Authority in relation to the DE&S Engineering Function, in each case to any member of a Contractor Related Party under the Transfer Regulations in connection with the commencement of such Services under the terms of this Agreement;

“Relevant Transfer Date” means the date on which a Relevant Transfer takes place under the Transfer Regulations;

"Remediation Programme" has the meaning given to it in Clause 61.2 (Remediation and Termination for Poor Performance);

"Request for Information" has the meaning given to it in the FOIA;

"Representatives" means the Contractor's Representative and the ADT Commercial Lead;

"Required Skills" means the level of skills, knowledge and experience expected from the Engaged Personnel to perform the relevant Approved Tasking Order;

"Requirements" means the Authority's requirements described in Schedule A (*Requirements*);

"Resource" means an individual appointed to a specific assignment in accordance with Paragraph 9.1.1 of Schedule A (*Requirements*);

"Revised Due Date" means the date that is thirty (30) Business Days after the end of a Relevant Month;

"SSCR Principles" means the Defence Reform Act 2014, the Single Source Contract Regulations 2014 and guidance published by the Single Source Regulations Office as amended from time to time;

"Security Aspects Letter" means the letter issued in accordance with Clause 67;

"Self-Certified Acceptance" means the process by which the Authority agrees that the Contractor can self-certify Acceptance of a Contractor Deliverable as such process is defined in the relevant Approved Tasking Order;

"Self-Support System" has the meaning given to it in Paragraph 11 of Schedule A (*Requirements*);

"Senior Leadership Group" means SLG Engineers (Head of Engineering Management) as defined in Schedule A (*Requirements*);

"Services" means the Engineering Services to be provided by the Contractor (and the Contractor Related Parties) under an Approved Tasking Order in accordance with Schedule A (*Requirements*);

"Single Source Contract Regulations ("SSCR") 2014" means the secondary legislation applicable to single source procurement;

"Single Source Regulations Office" ("SSRO") means the Non-Departmental Public Body acting as the independent expert for Authority single source procurement;

"Solicitation Date" has the meaning given to it in Clause 50.1.1;

"Specific Task" means activity leading to a defined Product as defined in Requirements Schedule A;

"Strategic Review" means the date on which the Parties declare that the conditions set out in Clause 5.7 (Strategic Review of the Engineering Delivery Partner) have been satisfied;

"Strategic Review Phase" means the period commencing on the IOC and expiring on the date of completion of the Strategic Review;

"Strategic Waypoints" means the IOC, Strategic Review and FOC;

"Stage Deliverables Assurance and Approvals Process" means the process used by the Authority to assess the development of Contractor Generated Innovation Opportunities and Authority Directed Innovation Opportunities as provided by the Authority to the Contractor from time to time;

"Sub-processor" means any Third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement;

"Subsequent Relevant Transfer" means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-contractor to a New

Provider or the Authority under the Transfer Regulations on termination, partial termination or expiry of this Agreement;

"Subsequent Transfer Date" means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

"Subsequent Transferring Employee" means an employee wholly or mainly employed or otherwise assigned to the Services whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-contractor to a New Provider on termination, partial termination or expiry of this Agreement;

"Surge" means a requirement of the Authority to fulfil an operational surge in activity, and designated as such in accordance with Schedule D (Tasking Process) Paragraph 5;

"SW Remediation Plan" has the meaning given to it in Clause **Error! Reference source not found.** (DE&S Strategic Waypoints);

"T&S Costs" means any travel and subsistence costs incurred by any Engaged Personnel that are reclaimable in accordance with Paragraphs 7.2 to 7.4 of Schedule I (Management and Liability for Engaged Personnel);

"Task" means a request by the Authority to the Contractor to deliver a Service or Services;

"Tasking Form" means the form used by the Parties as set out in Schedule D (Tasking) comprising Part A to specify the Authority's Requirements for a Task, Part B to set out the Contractor's response and Part C the Authority's acceptance;

"Tasking Order Form (Part A)" has the meaning given to it in Paragraph 3.1 of Schedule D (Tasking);;

"Tasking Order Form (Part B)" has the meaning given to it in Paragraph 3.2.2 of Schedule D (Tasking);

"Tasking Order Form (Part C)" has the meaning given to it in Paragraph 3.7 of Schedule D (Tasking);

"Task Order Lead" for a Mode 2 or Mode 3 Approved Tasking Order means the person appointed to manage the completion and delivery of a Product required for a Task;

"Task Order Manager" means for a Mode 1 Approved Tasking Order the person appointed by Authority to be the assignment lead for the Engaged Personnel;

"Tasking Process" means the processes set out in Schedule D (Tasking);

"Tenderer" means any tenderer or potential tenderer who participated in the Competition in any respect;

"Term" means the period commencing on the Agreement Commencement Date and expiring on the Expiry Date or the Termination Date, whichever occurs first;

"Termination Date" means the date of early termination of this Agreement;

"Third Party" means any person other than the Parties;

"Third Party IPR" means IPR which is:

- (a) owned by a Third Party (other than a Contractor Related Party);
- (b) or licensed to a Third Party (other than a Contractor Related Party) and in respect of which that Third Party has the right to grant sub-licences;

"Time Recording" means the recording of time for Resourcing Tasking Orders and will include the use of the DE&S Time Recording and Charging (TRaC) Tool or equivalent Time Recording Tool;

"Time Recording and Charging (TRaC)" means use of the DE&S Time Recording and Charging Tool for Resources or equivalent for time recording Tool;

"Total Quality and/or Performance" means the sum of:

- (a) all Late Quality and/or Performance Issues; and
- (b) any other Quality and/or Performance Issues that have been resolved to the satisfaction of the Authority in accordance with Paragraph 6.5 of Part II (Contract Management Mechanics) of Schedule C (Governance and Contract Management) during a KPI Period;

"Transferring Employee" means in respect of any Relevant Transfer which the Parties determine shall apply in accordance with Clause 51.9 of this Agreement an employee wholly or mainly employed or otherwise assigned to the Services whose employment transfers under the Transfer Regulations;

"Transfer Regulations" means either or both the Transfer of Undertakings (Protection of Employment) Regulations 2006 or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006, as appropriate;

"UK" means the United Kingdom of Great Britain and Northern Ireland;

"VAT" means any UK value added taxes;

"Vision" means a strong and professional engineering partnership, enabling agile and efficient outcomes for front line equipment and support;

"Withheld Amount" means any part of any payment claimed by the Contractor that the Authority determines is not payable pursuant to Paragraph 5 of Schedule F (Payment and Performance Management);

"year" means the twelve (12) month period from (but excluding) a day to (and including) the day bearing the same number in the same month of the following year (or, in the case only of a year commencing on 29 February, to the next following 28 February).

1.1.1 DEFCONS

DEFCON	Edition	Title
14	Edn 11/05	Inventions and Design Crown Rights and Ownerships of Patents and Registered Designs
76	Edn 12/06	Contractors Personnel at Government Establishments
91	Edn.11/06	Intellectual Property Rights in Software
513	Edn.11/16	Value Added Tax (VAT)
515	Edn.02/17	Bankruptcy and Insolvency
516	Edn.04/12	Equality
518	Edn 02/17	Transfer
520	Edn 05/18	Corrupt Gifts & Payments of Commission
527	Edn. 09/97	Waiver
528	Edn.07/17	Import and Export Licences
529	Edn.09/97	Law (English)
537	Edn.06/02	Rights of Third Parties

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538	Edn.06/02	Severability
539	Edn.08/13	Transparency
566	Edn 03/18)	Change of Control of Contractor (Para 1 Notice shall be 3 month minimum from an actual change of control)
602A	Edn.12/17	Quality Assurance (With Deliverable Quality Plan)
611	Edn.02/16	Issued Property
632	Edn 08/12	Third Party Intellectual Property
656A	Edn 08/16	Termination for Convenience – under £5M
656B	Edn 08/16	Termination for Convenience – over £5M
658	Edn.10/17	Cyber
659A	Edn.02/17	Security Measures.
660	Edn.12/15	Official-Sensitive Security Requirements
670	Edn.02/17	Tax Compliance
703	Edn.08/13	Intellectual Property Rights-Vesting In The Authority
705	Edn.11/02	Intellectual Property Rights-Research And Technology
800	Edn.12/14	Qualifying Defence Contract
801	Edn. 12/14	Amendments to Qualifying Defence Contractors -Consolidated Version
802	Edn.12/14	QDC: Open Book on sub-contracts that are not Qualifying Sub-Contracts
804	Edn.03/15	QDC: Confidentiality of Single Source Contract Regulations Information

DEFFORM 315 Edn 02/98 Contract Data Requirement

The following DEFCONs shall apply to the extent that they are articulated in an Approved Tasking Form:

DEFCON	Edition	Title
600	Edn.09/08	Guided Weapon Trials And Indemnity.
638	Edn.12/16	Flights Liability And Indemnity
684	Edn.01/04	Limitation Upon Claims In Respect Of Aviation Products

1.2 Where BS/EN/ISO 9000 or documents in the AQAP 100 series form part of the Agreement either by reference in the special conditions or as invoked by such Defence Standards (DEF-STANS) in the 05-090 series as are called up as part of the Agreement, the following provisions shall also have effect:

- a. **"the Purchaser"** means "the Authority";
- b. **"the Purchaser's Representative"** means **"the Representative of the Authority"**;
- c. **"the Project Management Authority"** or **"Progress Authority"** means the authorities so designated in the Agreement.

1.3 **Interpretation**

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In this Agreement, except where the context otherwise requires:

- 1.3.1 words and expressions defined in the Companies Act 2006 shall have the same meaning in this Agreement;
- 1.3.2 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision;
- 1.3.3 Not used
- 1.3.4 words in the singular shall include the plural and vice versa;
- 1.3.5 references to one gender include other genders;
- 1.3.6 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership and to an individual's executors or administrators;
- 1.3.7 a reference to a Clause, Paragraph, Schedule, Part, Rule, Appendix or Annex shall be a reference to a Clause, Paragraph, Schedule, Part, Rule, Appendix or Annex of or to this Agreement and a reference to a Paragraph or Part within a Schedule, Appendix or Annex shall be to a Paragraph or Part of that particular Schedule, Appendix or Annex unless otherwise stated;
- 1.3.8 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms;
- 1.3.9 references in this Agreement to any contract, agreement or other instrument (other than an enactment, statutory provision or subordinate legislation made thereunder) shall be deemed to be references to that contract, agreement or instrument as from time to time amended;
- 1.3.10 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.3.11 references to writing shall include any modes of reproducing words in any legible form and (unless expressly stated otherwise) shall include email;
- 1.3.12 references to the Authority or the Contractor shall include any assignees or successors in title to those persons;
- 1.3.13 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.3.14 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.3.15 a reference to a document "in the agreed terms" or any similar expression shall be to a document agreed between the Parties, annexed or appended to this Agreement and initialled for identification by the Parties;
- 1.3.16 except to the extent expressly provided, no rates or amounts expressed in this Agreement shall be subject to indexation during the Term;
- 1.3.17 any decision, act, or thing which the Authority is required or authorised to take or do under the Agreement 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;

- 1.3.18 unless excluded within the terms of the Agreement or where required by law: a. references to submission of documents in writing shall include electronic submission; and
- 1.3.19 any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as agreed between the parties is employed and the agreed method recorded in the Agreement.

1.4 Precedence of Documentation

- 1.4.1 Subject to Clause 1.4.2, if there is any inconsistency between the provisions of the body of this Agreement and the Schedules or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:
- (A) Clause 1 (*Definitions and Interpretations*) to Clause 86 (*Liability*) of this Agreement;
 - (B) all DEFCONs or DEFSTANS referenced in the Agreement;
 - (C) Schedule A (*Requirements*);
 - (D) all other Schedules; and
 - (E) any Approved Tasking Order.
- 1.4.2 The terms of any Approved Tasking Order will take precedence over any other part of this Agreement in so far as such terms relate to the delivery of the Services under that Approved Tasking Order (as the case may be).
- 1.4.3 If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 1.4.1, such Party shall promptly notify the other and the Parties will seek to resolve such inconsistency, provided that if either Party considers the inconsistency to be material then the matter shall be determined in accordance with Clause 64 (*Dispute Resolution Procedure*).

1.5 Engineering Delivery Partner

- 1.5.1 The Contractor is appointed by the Authority to provide the Services as outlined in Schedule A (Requirements).
- 1.5.2 The Contractor's provision of the Services will be by the placement of Approved Tasking Orders in accordance with Schedule D (Tasking Process) and shall be split into the following Parts:
- (A) Part A - Services – which shall be delivered against Part 2 of Schedule A to deliver the following:
 - (1) Mode 1 Critical Resource Augmentation
 - (2) Mode 2: Critical Output Delivery
 - (3) Mode 3: Programme of Critical Outputs
 - (4) Mode 4: Engineering Service Delivery.
 - (B) Part B - Innovation
 - (C) Part C – EDP Contractor Delivery Team.
- 1.5.3 Throughout the duration of this Agreement the Contractor's performance and delivery of the Approved Tasking Orders shall be monitored and incentivised using the Performance Regime as outlined in Schedule F (Payment and Performance Management).
- 1.5.4 The Parties acknowledge that the nature and methodology of the Services to be provided by the Contractor will need to be flexible and will evolve during the term of this Agreement.

2. QUALIFYING DEFENCE CONTRACT (QDC)

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

3. GOVERNING LAW

- 3.1 DEFCON 529 Edn. 09/97

4. COMMENCEMENT

4.1 Agreement Commencement Date

This Agreement shall come into effect on the Agreement Commencement Date.

- 4.2 Within 30 days of the Agreement Commencement Date the Contractor shall deliver to the Authority the Commencement Conditions identified at Clause 4.3. If one or more of the Commencement Conditions remains unsatisfied 30 days after the Agreement Commencement Date, and has not been waived by the Authority on or before that date, the Authority shall be entitled to terminate this Agreement with immediate effect as a Contractor Event of Default.

4.3 Commencement Conditions

The Contractor shall deliver to the Authority:

- 4.3.1 A copy of the board minute of the board of directors of QinetiQ Group plc (the parent of the Contractor) confirming that the Chief Executive Officer is authorised to approve the entry by the Contractor into this Agreement; and
- 4.3.2 A Contract Reporting Plan and a Contract Notification Plan in accordance with the SSCR 2014.
- 4.4 The Contractor shall use all reasonable endeavours to satisfy or procure the satisfaction of each of the Commencement Conditions not already satisfied or waived on the date of this Agreement as soon as possible.
- 4.5 The Authority may, by written notice to the Contractor, waive any of the Commencement Conditions in whole or in part.
- 4.6 **Failure to Satisfy Commencement Conditions**
- If one or more of the Commencement Conditions remains unsatisfied 60 days after the Agreement Commencement Date, and has not been waived by the Authority on or before that date, the Authority shall be entitled to terminate this Agreement with immediate effect as a Contractor Event of Default.
- 4.7 **NOT USED**

5. DURATION OF THE AGREEMENT

5.1 [REDACTED]

5.2 Duration of Agreement

- 5.2.1 Subject to the early termination of this Agreement in accordance with Clause 61 (Early Termination), Clause 5.3 (Authority Right to Break), or Clause 5.4 (Contractor Right to Break), this Agreement shall be for a period of 10 (ten) years from the Agreement Commencement Date.

5.3 Authority Right to Break

- 5.3.1 [REDACTED]:

- 5.3.2 [REDACTED].

- 5.3.3 [REDACTED]

- 5.3.4 [REDACTED].

5.4 Contractor Right to Break

- 5.4.1 [REDACTED]:

(A) [REDACTED]

(B) [REDACTED]

5.4.2 [REDACTED].

5.4.3 [REDACTED].

5.5 **DE&S** [REDACTED]

[REDACTED]

5.5.1 [REDACTED]:

[REDACTED]

[REDACTED]

5.5.2 [REDACTED]

[REDACTED]

(B) [REDACTED].

Review of DE&S [REDACTED]

5.5.3 [REDACTED].

5.5.4 [REDACTED]

5.5.5 [REDACTED]

[REDACTED]

5.5.6 [REDACTED].

5.6 [REDACTED]

5.6.1 [REDACTED]:

(A) [REDACTED]:

(1)

(2)

(B)

5.6.2 [REDACTED]

5.7 [REDACTED]

5.7.1 [REDACTED]:

5.7.2 [REDACTED]

5.7.3 [REDACTED]

5.8 [REDACTED]

5.8.1 [REDACTED]:

5.8.2 [REDACTED]

5.8.3 [REDACTED]
NOT USED

6. NOT USED

7. NOT USED

8. TRANSPARENCY
DEFCON 539 Edn. 08/13

9. CHANGE OF CONTROL OF THE CONTRACTOR

DEFCON 566 (Edn 03/18) Change of Control of Contractor.

10. CONTRACTOR WARRANTIES AND REPRESENTATIONS

10.1 Contractor Warranties and Representations

10.1.1 The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that on the date of this Agreement:

- (A) the Contractor is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (B) in the case of this Agreement (or other document required to be executed in order to satisfy the Commencement Conditions), that is executed before or on the date of this Agreement, all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Agreement, has been taken;

- (C) in the case of this Agreement (or other document) referred to in paragraph (B) above, the obligations expressed to be assumed by the Contractor are legal, valid, binding and enforceable to the extent permitted by Applicable Laws;
 - (D) the execution, delivery and performance by it of the Agreement (and other documents required to be executed in order to satisfy the Commencement Conditions), does not contravene any provision of:
 - (1) any Applicable Laws (including any Applicable Laws which have been enacted but are not yet in force);
 - (2) the memorandum and articles of association of the Contractor;
 - (3) any order or decree of any Relevant Authority which is binding on the Contractor; or
 - (4) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
 - (E) no claim is presently being assessed and no Legal Proceedings are presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which may have a material adverse effect on the ability of the Contractor to perform its obligations under the Agreement;
 - (F) no Legal Proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiries, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues in relation to the Contractor;
 - (G) the Contractor has not committed any Prohibited Act (as defined in DEFCON 520 (Edn. 05/18)) in connection with this Agreement or the Competition;
 - (H) in so far as it is aware, none of the Aurora Partner Sub-contractors has committed a Prohibited Act (as defined in DEFCON 520 (Edn. 05/18)) in connection with this Agreement or the Competition;
 - (I) (to the best of the knowledge of the Contractor, having made all due enquiries) none of the Aurora Partner Sub-contractors is or has been the subject of any investigation, inquiry or enforcement proceedings by any Relevant Authority regarding any offence or alleged offence under any legislation relating to anti-bribery and anti-corruption (including the Bribery Act 2010);
 - (J) (to the best of the knowledge of the Contractor, having made all due enquiries) none of the Aurora Partner Sub-contractors is or has been the subject of UK or foreign export control sanctions or investigations.
- 10.1.2 The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that throughout the duration of this Agreement it will have in place adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor (including Aurora Partner Sub-contractors) from bribing any person with the intention of obtaining or retaining business for the Contractor, or with the intention of obtaining or retaining an advantage in the conduct of business for the Contractor.

11. CONTRACTOR'S RELATED PARTIES

- 11.1 The Contractor shall at all times remain directly liable to the Authority for the due and proper performance of its obligations under this Agreement and shall be responsible and liable for the acts and omissions of the Contractor Related Parties in relation to this Agreement and the Services as if they were the acts and omissions of the Contractor.
- 11.2 Without limitation in respect of its actual knowledge, the Contractor shall for all purposes of this Agreement be deemed to have such knowledge in respect of the Services and other obligations under this Agreement as is held (or ought reasonably to be held) by any Contractor Related Party.

12. AUTHORITY RELATED PARTIES

Subject to the provisions of this Agreement, the Authority shall be responsible and liable for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.

13. NOTICES

- 13.1 A notice (including any approval, consent or other communication) in connection with this Agreement:

13.1.1 must be in writing in the English language;

13.1.2 when sent by post or left at an address, must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted to or from a place outside the UK) to the address of the addressee which is specified in this Clause 13 (*Notices*) in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 13 (*Notices*); or

13.1.3 may be sent by electronic mail to the email address of the addressee which is specified in this Clause 13 (*Notices*) in relation to the Party to whom the notice is addressed, or to such other address as the relevant Party may from time to time specify by notice given in accordance with this Clause 13 (*Notices*); unless a provision of this Agreement expressly provides otherwise.

- 13.2 The relevant details of each Party at the date of this Agreement are:

The Secretary of State for Defence

Address: DE&S, MOD Abbey Wood, Bristol, BS34 8JH

Email: Francesca.Insley576@mod.gov.uk

Attention (ADT Commercial Lead): Francesca Insley

Save for notices issued by the Contractor to the Authority under Clause 9 (*Change Of Control Of The Contractor*) which must be sent in accordance with Clause 9.

Contractor

Address: Cody Technology Park, Ively Road, Farnborough, Hampshire GU14 0LX

Email: PJRICHARDSON@qinetiq.com

Attention (Contractor's Representative): Peter Richardson

- 13.3 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 13.4.
- 13.4 Subject to Clause 13.5 below, a notice is deemed to be received:
- 13.4.1 in the case of a notice left at the address of the addressee, upon delivery at that address;

- 13.4.2 in the case of a posted letter, on the third (3rd) Business Day after posting or, if posted to or from a place outside the UK, the fifth (5th) Business Day after posting; and
- 13.4.3 in the case of email, when sent (except that an email shall not be deemed to have been sent if the sender receives a delivery failure notification).
- 13.5 A notice received or deemed to be received in accordance with Clause 13.4 on a day which is not a Business Day, or after 1700 on any Business Day, shall be deemed to be received on the next following Business Day.

14. REPRESENTATIVES

14.1 Contractor's Representative

The Contractor shall appoint the person whose name, address and email address is set out in Clause 13 (*Notices*) to act as the Contractor's Representative in connection with this Agreement.

14.2 Authority of the Contractor's Representative

- 14.2.1 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes connected with this Agreement. Unless notified by the Contractor in writing before such act or instruction, the Authority shall be entitled to treat any act of the Contractor's Representative which is authorised by the Agreement as being expressly authorised by the Contractor and the Authority shall not be required to determine whether authority has, in fact, been given.
- 14.2.2 The Contractor shall procure that the Contractor's Representative acts in accordance with the Contractor's Representative's powers and functions in this Agreement.

14.3 Change in Contractor's Representative

- 14.3.1 The Contractor may propose a change in the identity of the Contractor's Representative and Clause 13 (*Notices*) shall be updated accordingly unless the Authority refuses the change under Clause 14.3.2.
- 14.3.2 The Authority may refuse any change proposed by the Contractor under Clause 14.3.1 in its sole discretion.
- 14.3.3 During any period when the Contractor's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Agreement, the Contractor's Representative may temporarily delegate their functions to another person by giving the Authority written notice and seeking the Authority's approval of the identity of such person and the extent of his authority. The Authority shall not unreasonably withhold or delay approval of the delegate under this Clause 14.3.3.

14.4 ADT Commercial Lead

The Authority shall appoint the person whose name, address and email address is set out in Clause 13 (*Notices*) as the ADT Commercial Lead in connection with this Agreement.

14.5 Change in ADT Commercial Lead

- 14.5.1 The Authority may propose a change in the identity of the ADT Commercial Lead and Clause 13 (*Notices*) shall be updated accordingly.

- 14.5.2 During any period when the ADT Commercial Lead is unable through illness, incapacity, holidays or any other reason to carry out or exercise their functions under this Agreement, the ADT Commercial Lead may delegate such functions to another person by giving the Contractor written notice of the identity of such person and the extent of his authority.

15. AUTHORITY'S DISCLOSED DATA

15.1 Authority Disclosed Data

Subject to Clause 15.4 (Fraudulent Statements):

- 15.1.1 the Authority does not make any representation or give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority Disclosed Data; and
- 15.1.2 neither the Authority nor any Authority Related Party shall be liable to the Contractor in contract, tort (including the tort of negligence) or for breach of any statutory duty or otherwise as a result of:
- (A) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Disclosed Data; or
 - (B) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Agreement or the Competition.

15.2 Contractor's Due Diligence

Subject to Clause 15.4 (*Fraudulent Statements*) and Clause 15.5 (*Contractor's Standard of Care*), on entering into this Agreement, the Contractor agrees it has been given an opportunity to carry out a review and investigation of the documents contained in the Data Room and the Clarification Responses, and shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) as a consequence of:

- 15.2.1 any information not being provided in the Data Room or the Clarification Responses where such information is not material;
- 15.2.2 any fact or circumstance that has been fairly disclosed in the Data Room or the Clarification Responses;
- 15.2.3 any fact or circumstance which the Contractor, or its agents or advisers were, or ought reasonably to have been, aware of as a result of the contents of the Data Room or the Clarification Responses; or
- 15.2.4 any fact or circumstance which a Tenderer, acting in accordance with Good Industry Practice, would have been aware of having made reasonable due diligence enquiries.

15.3 No Relief

Subject to Clause 15.4 (

Fraudulent Statements) and Clause 15.5 (*Contractor's Standard of Care*), the Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient.

15.4 Fraudulent Statements

Nothing in this Clause 15 (*Authority's Disclosed Data*) shall exclude any liability which the Authority would otherwise have to the Contractor, for statements made fraudulently or fraudulent omissions to make statements prior to the date of this Agreement.

15.5 Contractor's Standard of Care

Where:

15.5.1 the Authority or an Authority Related Party has provided or made available information to the Contractor which is incorrect or insufficient for its stated purpose; and

15.5.2 the Contractor has exercised Good Industry Practice in assessing the accuracy and sufficiency of that information;

the Contractor shall not be liable for, nor suffer any Deduction or Withheld Amount in respect of, any acts or omissions undertaken in the provision of the Services in reliance upon that information.

15.6 Provision of Authority Disclosed Data

The Authority agrees that Tasks will be subject to specific Contract Data Requirements and the provision of the Authority Disclosed Data will be governed by the appropriate DEFCONs as outlined in an Approved Tasking Order and any subsequent requests made by the Contractor using a DEFFORM 315.

16. ASSIGNMENT AND NOVATION

16.1 DEFCON 518 Edn 02/17

17. CHANGE IN LAW

- 17.1 If a Change in Law occurs or is shortly to occur, either the Authority shall issue an Authority Proposal or the Contractor shall issue a Contractor Proposal, in each case expressing the relevant Party's opinion on the likely effects of the Change in Law and giving details of:
- 17.1.1 any necessary change to a Service or Services;
 - 17.1.2 whether any changes are required to the terms of this Agreement or to an Approved Tasking Order to deal with the Change in Law;
 - 17.1.3 whether relief from compliance with the obligations of the Contractor under this Agreement or any Approved Tasking Order is required;
 - 17.1.4 any estimated change in costs in providing the Services or performing the Contractor's obligations under this Agreement or any Approved Tasking Order that directly result from any Change in Law; and
 - 17.1.5 any capital expenditure that is required or no longer required in order to provide the Services or perform the Contractor's obligations under this Agreement or any Approved Tasking Order as a result of a Change in Law taking effect during the Term,
- in each case giving in full detail the procedure for implementing the change to the Services.
- 17.2 The Contractor shall use all reasonable endeavours to mitigate any adverse impact on the EDP Programme of any Change in Law and shall provide the Authority with evidence as to how it proposes to minimise any increase in costs or maximise any reduction in costs of the Contractor and of any Aurora Partner Sub-contractor and demonstrating that any capital expenditure that has been avoided has been taken into account in amending Approved Tasking Order prices.
- 17.3 As soon as practicable after receipt of an Authority Proposal by the Contractor or a Contractor Proposal by the Authority under Clause 17.1 above, the Parties shall discuss and agree the issues referred to in Clause 17.1 above and any other ways in which the Contractor can mitigate the effect of the Change in Law.
- 17.4 Subject always to the provisions of Clause 20 (Formal Amendments to the Agreement), if it is agreed pursuant to Clause 17.3 that a change is necessary in order to comply with a Change in Law, the Authority shall either:
- 17.4.1 approve the change; or
 - 17.4.2 agree an alternative means by which the relevant Change in Law can be complied with; or
 - 17.4.3 reject the change,
- and the Contractor shall be entitled to such relief from its obligations and/or compensation for loss of revenue or increase in costs as a result of the implementation of the Change in Law, where appropriate.
- 17.5 In the event that a change is approved by the Authority pursuant to Clause 17.4.1, or to the extent that any alternative means of implementing the Change in Law necessitates a change to this Agreement or to any Approved Tasking Order pursuant to Clause 17.4.2, the Parties shall amend this Agreement in accordance with the provisions of Clause 20 (Formal Amendments to the Agreement).
- 17.6 If the Parties are unable to reach agreement that a change is necessary or the terms on which the change is to be implemented, either Party may refer the matter for determination first to the Engineering Hub Operations Board for resolution and then if the matter cannot be resolved within a further 10 Business Days, it shall be determined in accordance with Clause 64 (Dispute Resolution Procedure).
- 17.7 For the purposes of this Clause 17 (Change in Law), a change of interpretation of a regulatory requirement by a regulatory authority with whose regulations the Contractor must comply shall only be treated as a Change in Law if the Contractor demonstrates to the Authority that there has been such a change of interpretation. Provided that in no circumstances shall the

Contractor be able to claim that there has been a change of interpretation of a regulation by a regulator if the Contractor has not complied with a regulation and the regulator is not requiring the Contractor to comply with it.

- 17.8 In the event that there is a change of interpretation described in Clause 17.7 (Change in Law), the Contractor shall, if requested to do so by the Authority and at the Authority's expense, provide reasonable assistance to the Authority to challenge such interpretation.

18. SEVERABILITY

- 18.1 DEFCON 538 Edn. 06/02

19. VARIATION

No variation of this Agreement (or any document referred to in it) shall be effective unless it is in writing (which for this purpose does not include email) signed by or on behalf of each of the Parties and is accompanied by DEFFORM 10B signed by or on behalf of each of the Parties. The expression "**variation**" includes any variation, supplement, deletion or replacement, however effected.

20. FORMAL AMENDMENTS TO THE AGREEMENT

- 20.1 Either Party shall be entitled to request changes to this Agreement in accordance with this Clause. This Agreement shall only be amended by the written agreement of the duly authorised representatives of the Parties.

- 20.2 Notwithstanding any other provision of this Agreement or any DEFCON, neither Party shall amend this Agreement (or a defined component of this Agreement) in a way that would affect the price determined for any Approved Tasking Order pursuant to this Agreement under SSCR 10 or SSCR 14 without the prior written approval of the Delivery Partner Performance Committee.

- 20.3 For an Authority Proposal, the written agreement shall consist of the:

- 20.3.1 Authority Proposal;
- 20.3.2 issue of a serially numbered amendment letter, by the Authority; and
- 20.3.3 unqualified acceptance of the offer from the Contractor.

The amendment shall come into force only when the Contractor has returned the DEFFORM 10B as an unqualified acceptance of the Authority's offer.

- 20.4 No amendment to this Agreement shall come into effect unless it satisfies Clause 20.1 and Clause 20.3.

- 20.5 In the event of a Contractor Proposal the following process shall apply:

- 20.5.1 The Contractor shall issue its Contractor Proposal in writing to the ADT Commercial Lead; and
- 20.5.2 The Authority shall consider the Contractor Proposal and shall acknowledge receipt to the Contractor within ten (10) Business Days or such longer period as the Parties may agree. The acknowledgment shall also provide an indication of likely time scale of the Authority's definitive response.
- 20.5.3 The Authority's response through the ADT Commercial Lead shall either:

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- (A) formally notify the Contractor of its decision to progress the Contractor Proposal by instigating the commercial process as set out under Clause 20.2 with the issue of an Authority Proposal; or
 - (B) formally notify the Contractor of its decision not to progress with the Contractor Proposal.
- 20.6 For the avoidance of doubt an amendment to this Agreement shall not come into effect until the Contractor has signed and returned DEFFORM 10B to the ADT Commercial Lead.
- 20.7 In the event that a Party cannot provide unqualified acceptance of a proposal, said Party shall as soon as practicable provide justification.
- 20.8 If either Party disagrees with the objections raised, the Parties shall meet with a view to establishing whether the objections are valid or can be overcome. If no agreement or a way forward can be reached within 30 Business Days the Dispute shall be referred to the Engineering Hub Operations Board for resolution, and then if that cannot be resolved within a further 10 Business Days, it shall be determined in accordance with Clause 64 (*Dispute Resolution Procedure*).
- 20.9 Subject to Clause 17 (Change in Law), the Contractor shall not be entitled to object to any Authority Proposal to implement a Change in Law provided always the Contractor may object to any change to Authority policies and/or Authority guidance (with which the Contractor is required to comply) which have an impact on the Services unless the Authority agrees that such change may be considered under this Clause.
- 20.10 For Approved Tasking Orders let pursuant to this Agreement, the process set out in Appendix 4 of Schedule C (Governance and Contract Management), shall be followed, in order to avoid Exceptional Changes where possible.
- 20.11 Subject to the Parties having completed the process set out in Clause 20.10, in the event that either Party considers a change to be an Exceptional Change, the process to agree such a change as either an Authority Proposal or a Contractor Proposal set out in Clauses 20.1 to 20.9 shall be followed.

21. AMENDMENTS TO THE AGREEMENT – CONSOLIDATED VERSIONS

21.1 DEFCON 801 Edn. 12/14

22. **WAIVER**

DEFCON 527 Edn. 09/97

23. **NO PARTNERSHIP, AGENCY OR EMPLOYMENT RELATIONSHIP**

The Authority and the Contractor have entered into this Agreement as independent parties. Nothing in this Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute either Party a partner or agent or principal or employee or employer of the other nor shall the execution, completion and implementation of this Agreement confer on either Party any power to bind or impose any obligations to any Third Parties on the other Party or to pledge the credit of the other Party.

24. **COUNTERPARTS**

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

25. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 25.1 Subject to Clause 51 (*Transfer Regulations*), Clause 86.15.1 (*Sole Recourse*) and Paragraph 1.5 of Schedule N (*Transfer Regulations*), DEFCON 537 Edn. 06/02 shall apply.

26. ENTIRE AGREEMENT

- 26.1 The Parties to this Agreement confirm that this Agreement, together with the documents referred to in this Agreement, but excluding the Operating Manual, represent the entire understanding, and constitutes the Parties' whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

- 26.2 The Parties confirm that:

- 26.2.1 in entering into this Agreement they have not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement; and
- 26.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement are pursuant to this Agreement, and without limitation, neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Agreement) in relation to any such representation, warranty, assurance, covenant, indemnity, undertaking or commitment.

27. CONFLICTS OF INTEREST

- 27.1 The Authority and the Contractor agree that it is a fundamental principle of this Agreement that the Contractor shall, and the Contractor shall procure that Aurora Partner Sub-contractors shall, avoid or manage conflicts of interest and any resulting Commercially Confidential Information in the manner set out in Schedule G (COI Compliance Regime).
- 27.2 The Contractor agrees that it shall, and it shall procure that the Aurora Partner Sub-contractors shall, adopt and comply with the COI Compliance Regime.

28. PROHIBITED ACTS

DEFCON 520 Edn. 05/18

PART II– PARTIES' RIGHTS AND OBLIGATIONS

29. OBLIGATIONS OF THE AUTHORITY

29.1 Compliance with Law

The Authority shall comply with all Applicable Laws in the performance of its obligations under this Agreement

29.2 Obligations of the Authority in relation to Engaged Personnel

The Authority shall comply with its obligations in relation to Engaged Personnel as set out in Schedule I (*Management and Liability for Engaged Personnel*).

30. OBLIGATIONS OF THE CONTRACTOR

30.1 Obligations of the Contractor

30.1.1 The Contractor shall provide Engaged Personnel to the Authority in accordance with Schedule A (Requirements), Schedule C (Governance and Contract Management), Schedule D (Tasking Process) and Schedule I (Management and Liability for Engaged Personnel).

30.1.2 The Contractor shall put forward Contractor Generated Innovation Opportunities in accordance with Part B (Innovation) of Schedule A (Requirements) and the Part B Tasking Process in Part II of Schedule D (Tasking Process) and follow the processes described in Schedule Q (Innovation).

30.2 Standards of Performance

The Contractor shall (and shall procure that the Contractor Related Parties) perform the Services:

30.2.1 in compliance with all Applicable Laws;

30.2.2 in compliance with Good Industry Practice;

30.2.3 in compliance with the Authority's health and safety policies (as updated from time to time) when working on an Authority site and which are notified to the Contractor;

30.2.4 in compliance with the relevant Approved Tasking Order;

30.2.5 in compliance with the COI Compliance Regime where a Conflicting Project has been identified;

30.2.6 in compliance with the Cyber Security measures (Clause 68);

30.2.7 in compliance with the Security Requirements (Part XI).

31. CONTRACTOR DELIVERABLES

31.1 Contractor Deliverables provided by the Contractor shall be subject to the application of the acceptance procedures set out in the relevant Approved Tasking Order.

31.2 Where Self-Certified Acceptance applies the Contractor shall deliver the Contractor Deliverables to the Authority in accordance with the Acceptance Criteria and the Contractor

Deliverables shall be deemed to have been accepted by the Authority upon delivery, without hindrance to Contractors ability to claim payment.

- 31.3 Where Self-Certified Acceptance does not apply to a Contractor Deliverable, Acceptance of a Contractor Deliverable shall be deemed to have occurred upon one of the following events:
- 31.3.1 the Authority has confirmed acceptance in writing to the Contractor within 15 (Fifteen) Business Days of receiving the Contractor Deliverable; or
 - 31.3.2 the Authority has not rejected a Contractor Deliverable in writing within 15 (Fifteen) Business Days of receiving the Contractor Deliverable; or
 - 31.3.3 the Contractor has performed any remedial work agreed with the Authority and resubmitted the Contractor Deliverable to the Authority in accordance with Clause 31.5.
- 31.4 In the event that the Authority rejects a Contractor Deliverable within 15 (Fifteen) Business Days of receiving the Contractor Deliverable and the Authority has confirmed such rejection in writing together with reason/s the specific Acceptance Criteria which have not been met, the Parties shall meet within 5 Business Days to discuss the reason/s for rejection.
- 31.5 During the meeting pursuant to Clause 31.4, if the Contractor agrees with the Authority reason/s for rejection it shall also:
- 31.5.1 agree with the Authority any remedial action/s required by the Contractor to address the Authority's reasons for rejection; and
 - 31.5.2 have up to 20 (Twenty) Business Days within which to carry out the remedial action and resubmit the Contractor Deliverable to the Authority. Such other period of remedy can also be agreed in writing between the Parties.
- 31.6 In the event that the Contractor disagrees with the Authority's reasons for rejecting a Contractor Deliverable the Contractor shall:
- 31.6.1 advise the Authority Representative in writing of its reasons for disagreeing with the rejection within 10 (Ten) Business Days of the meeting at Clause 31.4; and
 - 31.6.2 the matter or matters in question shall be escalated and determined in accordance with Part 1 of Schedule C (Governance and Contract Management). The Parties reserve the right to escalate the matter to resolve according to Clause 64 (*Dispute Resolution Procedure*).
- 31.7 Acceptance shall be governed solely by the procedure set out in this clause 31 unless the Parties agree otherwise pursuant to an Approved Tasking Order.
- 32. NOT USED**
- 33. NOT USED**
- 34. QUALITY ASSURANCE (WITH DELIVERABLE QUALITY PLAN)**
- 34.1 DEFCON 602A Edn. 12/17
- 35. UK IMPORT AND EXPORT LICENCES**
- 35.1 DEFCON 528 Edn. 07/17

36. SUB-CONTRACTS

- 36.1 The Contractor shall, 30 Business Days following request by the Authority, provide the following information for all sub-contractors engaged in the performance of the Services under this Agreement:
- (A) the names of the sub-contractors;
 - (B) a statement of the Services provided;
 - (C) the value and duration of the sub-contract; and
 - (D) if requested, the material terms of the sub-contract.
- 36.2 The Contractor shall manage its supply chain and sub-contractors in accordance with Schedule G (COI Compliance Regime) where a Conflicting Project is identified.
- 36.3 The Contractor shall provide the Authority with the required reports and data in relation to sub-contracts, as detailed in Schedule C (Governance and Contract Management).
- 36.4 The Contractor shall ensure that all sub-contracts contain the following:
- (1) a term which requires payment to be made to the sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice;
 - (2) provisions equivalent to the DEFCONs set out in Part XI (Security) namely DEFCON 659A, DEFCON 660 and DEFCON 658;
 - (3) a requirement that where any GFA is used under a sub-contract, reasonable access shall be provided to the Authority for inspection of the GFA;
 - (4) a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce its rights under that sub-contract;
 - (5) a provision requiring compliance with a Compliance Agreement drawn up in accordance with Schedule G (COI Compliance Regime) in the event that the sub-contractor's provision of Services results in a Conflicting Project which can't otherwise be managed in accordance with Schedule G (COI Compliance Regime);
- 36.5 Sub-contracting any part of the Services shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Agreement. The Contractor shall be responsible for the acts and omissions of the sub-contractors as though such acts or omissions were its own.
- 36.6 The Contractor shall inform the Authority at the earliest reasonable opportunity it becomes aware of any breach by any sub-contractor of any of the requirements set out or referred to in DEFCON 659 (Security Measures), DEFCON 658 (Cyber), DEFCON 520 (Corrupt Gifts and Payments of Commission).

PART III – FINANCIAL INSPECTION AND REVIEW

37. FINANCIAL MANAGEMENT INFORMATION

The Contractor shall maintain the financial management information (which for the purposes of this Agreement shall mean the value of work completed at a given point in time), and shall report it to the Authority in accordance with Appendix 3 (Financial Management Reporting Requirements) to Schedule C (Governance and Contract Management). The obligation to report under Appendix 3 (Financial Management Reporting Requirements) to Schedule C (Governance and Contract Management) shall be without prejudice to any additional or alternative reporting obligation under this Agreement.

38. NOT USED

39. OPEN BOOK ACCOUNTING ON SUB-CONTRACTS WHICH ARE NOT QUALIFYING SUB-CONTRACTS

39.1 DEFCON 802 Edn. 12/14

40. NOT USED

PART IV– CONTRACT MANAGEMENT

41. GOVERNANCE

- 41.1 Each Party shall comply with Part 1 of Schedule C (Governance and Contract Management).
- 41.2 The Contractor shall and shall procure that each of the Aurora Partners shall comply with Schedule B (Contractor Group Governance).

42. CONTRACT MANAGEMENT AND TASKING

- 42.1 The Parties shall comply with the provisions of Schedule C (Governance and Contract Management) and Schedule D (Tasking).
- 42.2 The Contractor shall fulfil its obligations under the Continuous Improvement Plan.

43. MONTHLY CONTRACT REVIEWS

- 43.1 The ADT Commercial Lead and the Contractor's Representative shall hold a meeting on a monthly basis ("**Contract Management Meetings**"). If requested by the ADT Commercial Lead from time to time, the Contractor's Representative shall ensure that the other Contractor Delivery Team Personnel are in attendance at Contract Management Meetings.
- 43.2 The ADT Commercial Lead shall have the right, in its sole discretion, to demand more frequent Contract Management Meetings, provided only that it gives the Contractor's Representative reasonable notice.
- 43.3 All Contract Management Meetings will be held at a location to be agreed between the ADT Commercial Lead and the Contractor's Representative, acting reasonably.
- 43.4 The Contractor's Representative shall (unless the Authority agrees otherwise) five (5) Business Days prior to each Contract Management Meeting, provide to the ADT Commercial Lead the reports and information specified in accordance with Part III Schedule C (Governance and Contract Management).
- 43.5 The Contractor's Representative and the ADT Commercial Lead shall each update the other on any issues in relation to which they may reasonably wish to be informed, including:
 - 43.5.1 details of any Tasking Order Forms for Resource and Specific Tasks received and progress made in meeting the requirement under Tasking Order Forms;
 - 43.5.2 details of any Innovation opportunities in progress;
 - 43.5.3 progress made in meeting relevant Milestones;
 - 43.5.4 any Quality and/or Performance Issues; and
 - 43.5.5 progress made in meeting KPIs.
- 43.6 The Contract Management Meetings shall be chaired by the ADT Commercial Lead (or any other person nominated by the Authority) and secretarial support shall be provided by the Contractor.

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43.7 Unless otherwise stated the Contractor shall be responsible for taking the minutes of the meeting. These minutes will be forwarded in draft form to the ADT Commercial Lead for his review and comments prior to the final version being issued.

44. **NOT USED**

45. QDC: CONFIDENTIALITY OF SINGLE SOURCE CONTRACT REGULATIONS INFORMATION

45.1 DEFCON 804 Edn. 03/15

PART V – ASSET MANAGEMENT

46. GOVERNMENT FURNISHED ASSETS AND CONTRACTOR ASSETS

46.1 Government Furnished Assets – Personnel

The Authority shall, on and from the Agreement Commencement Date, to provide Government Furnished Resources ("**GFR**"), Government Furnished Facilities ("**GFF**"), Government Furnished Equipment ("**GFE**"), and Government Furnished Information ("**GFI**"), together the "**Government Furnished Assets**" or "**GFA**" in accordance with the listing at Appendix 1 (*Government Furnished Assets*) to Schedule O (*Accommodation and IT*).

46.2 Government Furnished Assets – Outputs

46.2.1 GFA may need to be made available to the Contractor to assist it in delivering the Contractor Deliverables. The scope and scale of each GFA issued shall be agreed with the Task Order Lead and will be called up in the Approved Tasking Order, as appropriate, for the periods indicated at the time of issue.

46.2.2 All such GFA will be issued by (or through) the Task Order Lead who will advise the Contractor of the terms of issue and period of loan at the time of each such issue. The GFA issued to the Contractor shall be recorded on the Approved Tasking Order Statement of Requirement.

46.2.3 The Contractor shall observe the instructions of the Task Order Lead concerning any GFA which the Contractor is authorised to demand from Government sources to assist it in delivering the Contractor Deliverables.

46.3 Government Furnished Assets – Management

46.3.1 Where the Contractor requires that the Authority provide any further GFA, it shall give the Authority a minimum of 4 (four) weeks' notice with full details of the request. The Authority shall use reasonable endeavours to meet the additional requirements, but will be under no obligation to do so. If the requirement can be satisfied from the Authority's existing resources the appropriate terms shall be negotiated (including the type of loan, dates, rate cards and cost). The register of GFA set out at Appendix 1 (*Government Furnished Assets*) to Schedule O (*Accommodation and IT*) will accordingly be updated from time to time to reflect the revised GFA requirements. All requests for GFA must be directed to the ADT Commercial Lead unless advised otherwise.

46.3.2 The Authority shall have no liability to the Contractor if, when the GFAs are made available or offered to be made available on the agreed date, the Contractor fails to make use of them.

46.3.3 If the Authority incurs nugatory expense which can be shown to be a direct result of actions at Clause 46.3.2 the Authority reserves the right to make appropriate recovery from the Contractor with such recovery based on the appropriate reduction negotiated and agreed when providing the further GFA under Clause 46.1 and Clause 46.2.

46.3.4 The Contractor shall comply with the instructions of the Authority regarding any GFA issued to it for the purpose of the Agreement and shall be responsible for the safe custody of the GFA while in its possession or the possession of a Contractor Related Party. The Contractor shall observe any accounting instructions issued to it by the Authority (see also DEF STAN 05-099).

- 46.3.5 The Contractor shall not modify any GFA without the prior written agreement of the Authority. If the Contractor has any doubt about the suitability of any item, or has proposals for design changes, the Contractor shall promptly advise the Authority accordingly. The Contractor shall ensure that the design of the installation using GFA is in accordance with the specific requirements of such GFA.
- 46.3.6 Acceptance of all GFA shall take place through usage of the property and the Contractor shall notify the Authority of any defects or deficiencies that are discovered during usage.
- 46.3.7 If either Party identifies that delivery of GFA may be delayed, the Parties shall work together to identify alternative solutions to mitigate the impact of any delay. If agreement is not reached and the GFA are subsequently delivered late, and such late delivery impacts upon the delivery of any Approved Tasking Order or Approved Innovation Project against agreed Milestones or Personnel being able to perform the Services under an Approved Tasking Order, then:
- (A) the timeframes required for the delivery of such Approved Tasking Order or Approved Innovation Project shall be extended by the number of Business Days of the delay;
 - (B) the Contractor shall be entitled to payment on the basis of agreed rates applicable for an Approved Tasking Order for the number of Business Days of the delay;
 - (C) no additional amount shall be payable by way of compensation for any costs or expenses or losses suffered or incurred by the Contractor in respect of the delay; and
 - (D) the Approved Tasking Order shall be amended pursuant to Clause 20 (Formal Amendments to the Agreement).
- 46.3.8 The Contractor shall use reasonable endeavours to minimise any impact on its performance and minimise additional costs payable under Clause 46.3.7.
- 46.3.9 The Contractor shall take such steps as may be reasonably necessary to ensure that it has brought to the attention of all Contractor Related Parties and any other persons dealing with any GFA that the Authority is the owner of the GFA. The Contractor shall notify the Authority of any attempts by a Third Party to secure a lien or rights of a similar kind on any GFA. The Contractor shall concurrently notify the Third Party that the Authority is the owner of the GFA.

- 46.3.10 The cost of maintenance and calibration of all GFAs shall be included within the Part A Fee or Innovation Fees (as applicable). The Contractor shall not be responsible for periodic servicing required or for repairs which are not due to the acts or omissions of the Contractor or the Contractor Related Parties.
- 46.3.11 The Contractor shall provide reasonable access to any GFA issued under the Agreement for inspection by the Authority.
- 46.3.12 The Contractor shall return any GFA in accordance with the dates and requirements set out in Appendix 1 (*Government Furnished Assets*) to Schedule O (*Accommodation and IT*) or as set out in the Approved Tasking Order or Part B Task (as applicable). If the Contractor fails to return any GFA within two (2) Business Days of the required date, the Authority may withhold a sum from the final payment due under the Approved Tasking Order or Part B Task equivalent to the value of such GFA.
- 46.3.13 This Clause 46 (*Government Furnished Assets*) is without prejudice to the Contractor's obligations under Clause 73 (*Protection of Information*).
- 46.3.14 The Contractor shall:
- (A) observe the terms and conditions required by the Authority from time to time regarding any GFA made available to the Contractor; and
 - (B) without limiting Clause 46.3.12, be responsible for the safe custody and due return of the GFA and shall be responsible for all loss or damage thereto until re-delivered to the Authority or disposed of in accordance with the Authority's instructions.

46.4 Contractor Assets

The Contractor shall provide the accommodation and facilities including IT facilities set out in Schedule O (*Accommodation and IT*) unless an Approved Tasking Order or Part B Task provides that the Authority will provide such accommodation and facilities.

PART VI– ENGAGED PERSONNEL MATTERS

47. NON-DISCRIMINATION AND EQUALITY

47.1 DEFCON 516 Edn. 04/12

48. ENGAGED PERSONNEL

48.1 The Contractor shall comply with its obligations in relation to Engaged Personnel in Schedule I (Management and Liability for Engaged Personnel).

48.2 The Contractor shall mobilise and demobilise the Engaged Personnel in accordance with the time frames identified in each Approved Tasking Order.

49. KEY PERSONNEL

49.1 The Contractor shall appoint the people identified as Key Personnel to those roles.

49.2 The Contractor acknowledges that the Key Personnel are essential to the proper performance of this Agreement to the Authority. The Contractor may propose a change in the identity of the Key Personnel and may suggest a replacement that is as, or more, qualified, experienced and competent as the previous incumbent of such role and fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced. The Contractor shall ensure that a suitably detailed handover is performed.

49.3 The Authority, acting reasonably, and in exceptional circumstances, may notify the Contractor that a change to the Key Personnel does not meet the requirements of Clause 49.2. In the event of such notification, the Authority will provide the Contractor with written reason(s) at the same time as it give its notification.

49.4 The Contractor shall either:

49.4.1 Take the required steps to provide an alternative candidate for the Key Personnel role; or

49.4.2 Notify the Authority that the basis for the notification is not accepted and shall arrange to meet with the Authority to discuss and attempt to resolve the matter.

If, within 20 working days, a resolution to the matter has not been agreed, the matter shall be determined in accordance with Clause 64 (Dispute Resolution Procedure).

49.5 On and from the Agreement Commencement Date, the Key Personnel shall hold SC security clearance unless otherwise agreed.

49.6 The Contractor shall ensure that prior to being appointed each member of the Key Personnel has:

49.6.1 successfully completed all Contractor-required mandatory training;

49.6.2 successfully completed all Authority-required mandatory training as follows: Display Screen Equipment, Health & Safety, Basic Fire Awareness, Equality and Diversity Essentials, Unconscious Bias, Business Continuity, Site & DE&S Induction, General Security Threat Briefings, Office Safety, IT/IS Induction, Defence Information Management Passport, Introduction to the Engineering Function, Counter Fraud Bribery and Corruption, Protecting Information Induction and that the Key Personnel completes any additional training required by the Authority from time to time; and

49.6.3 signed and returned to the ADT Commercial Lead a Letter of Placement.

49.7 The Contractor shall ensure that:

49.7.1 each Key Personnel (including their approved replacements) remains in that role for a period of 12 months, on a semi-permanent basis (3 or 4 days per week);

49.7.2 there is a two (2) week handover period to the replacement Key Personnel;

49.7.3 any replacement of Key Personnel is staggered and ensures that there is continuity of, and no detrimental effect on, the Services, or otherwise on the performance of this Agreement.

50. NON SOLICITATION

50.1 Between the Agreement Commencement Date and the Expiry Date or termination (howsoever caused) of this Agreement (the date of such expiry or termination being the "**Relevant Date**"), the Contractor covenants with the Authority that it shall not, and shall procure that no Aurora Partner Sub-contractor shall, unless it has obtained the prior written consent of the Authority, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the Authority any person:

50.1.1 who is, and was, on the first date on which the attempt to solicit or entice away occurs (the "**Solicitation Date**"):

(A) directly or indirectly employed or engaged by the Authority in a commercial, finance, procurement, programme and project management, or engineering capacity at Level 2 or above; or

(B) whose departure from the Authority would be reasonably likely to have a material adverse effect on the Authority's operations; and

50.1.2 with whom at any time during the twelve (12) months prior to the Solicitation Date the Contractor or any Aurora Partner Sub-contractor had a material amount of contact; or

50.1.3 in respect of whom the Contractor or any Aurora Sub-contractor possessed a material amount of Commercially Confidential Information as at the Solicitation Date,

with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his or her contract of employment or engagement by reason of leaving).

50.2 Between the Relevant Date and the expiration of twelve (12) months from the Relevant Date, the Contractor covenants with the Authority that it shall not, and shall procure that no Aurora Partner Sub-contractor shall, unless it has obtained the prior written consent of the Authority, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the Authority any person:

50.2.1 who is, and was, immediately prior to the Relevant Date:

(A) directly or indirectly employed or engaged by the Authority in a commercial, finance, procurement, programme and project management, or engineering capacity at Level 2 or above; or

(B) whose departure from the Authority would be reasonably likely to have a material adverse effect on the Authority's operations; and

- 50.2.2 with whom at any time during the twelve (12) months prior to the Relevant Date the Contractor or any Aurora Partner Sub-contractor had a material amount of contact; or
- 50.2.3 in respect of whom the Contractor or any Aurora Partner Sub-contractor possessed a material amount of Commercially Confidential Information as at the Relevant Date,
- with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his or her contract of employment or engagement by reason of leaving).
- 50.3 Notwithstanding Clauses 50.1 and 50.2, any recruitment of any person by the Contractor or by any Aurora Partner Sub-contractor as a result of that person independently responding to any general recruitment advertisement by the Contractor or any Aurora Partner Sub-contractor in general or specialist publications shall not constitute a breach of this Agreement.
- 50.4 In the event that any person directly or indirectly employed or engaged by the Authority and subject to the restriction in Clause 50.1 is recruited in accordance with Clause 50.3, the Contractor shall not be permitted to employ such person as a Member of Engaged Personnel without the Authority's prior written consent.
- 50.5 The Authority shall not until 12 months after the cessation of the involvement of a Relevant Personnel in the performance of the Services, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the Contractor or any Aurora Partner Sub-contractor, any Relevant Personnel for Relevant Employment. In this Clause:
- 50.6
- 50.6.1 **“Relevant Personnel”** means individual Personnel who were introduced to the Authority in the course of or in connection with the Services; and,
- 50.6.2 **“Relevant Employment”** means employment for Relevant Personnel to discharge the type of role or function for the Authority as they performed in relation to the Services.
- 50.7 Notwithstanding Clause 50.5, any recruitment of any person by the Authority as a result of that person independently responding to any general recruitment advertisement by the Authority in general or specialist publications shall not constitute a breach of this Agreement.

51. TRANSFER REGULATIONS

- 51.1 Subject to Clause 51.9, the Parties agree that it is the intention of the Parties on and from the Agreement Commencement Date, and at all times during the provision of the Services, that the Transfer Regulations shall not apply in such a way so as to transfer the employment (or any associated or related liabilities) of any:
- 51.1.1 employee of the Authority or of any contractor or sub-contractor of the Authority (other than any Contractor Related Party) to any member of the Contractor Related Party; or
- 51.1.2 employee of any member of the Contractor Related Party to the Authority, in connection with the commencement or provision of any of the Services.

51.2 If the contract of employment (or any associated or related liabilities) of any Non-Transferring Employee, is by reason of the Transfer Regulations, found or alleged to have effect as if originally made with any Contractor Related Party (a "**Commencement Transfer Allegation**"), then:

- 51.2.1 promptly upon becoming aware of any Commencement Transfer Allegation (including the threat of any Commencement Transfer Allegation) (and in any event within five (5) Business Days of becoming so aware) the applicable Party shall notify the other in writing (and, in the case of the Contractor, any such awareness of any Contractor Related Party shall be imputed to the Contractor);
- 51.2.2 the Contractor shall, and shall procure that the relevant other Contractor Related Party, shall keep the Authority informed of all material developments in relation to the relevant Commencement Transfer Allegation and relevant Non-Transferring Employee;
- 51.2.3 the Authority may (or may procure that a third party may), within five (5) Business Days of the notification made pursuant to Clause 51.2.1, offer employment to such Non-Transferring Employee;
- 51.2.4 if such offer is accepted (or if the situation has otherwise been resolved by the Authority to the satisfaction of the Contractor or Contractor Related Party), the Contractor shall, and shall procure that the relevant Contractor Related Party shall, immediately release the Non-Transferring Employee from their employment;
- 51.2.5 if after the five (5) Business Day period described at Clause 51.2.3 has elapsed, no such offer of employment has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Contractor, the relevant Contractor Related Party (as applicable) may within ten (10) Business Days give notice to terminate the employment of such Non-Transferring Employee;
- 51.2.6 other than where Clauses 51.2.3, 51.2.4 and 51.2.5 apply, the Contractor shall, and shall procure that the relevant Contractor Related Party, shall consult with and follow the reasonable instructions of the Authority in relation to all matters connected with the Commencement Transfer Allegation and the Non-Transferring Employee and take any and all such action as the Authority may reasonably direct in relation to the Commencement Transfer Allegation and the Non-Transferring Employee, including commencing, conducting, defending, resisting, settling, compromising or appealing against any proceedings or terminating the employment of the Non-Transferring Employee,

and subject to the applicable Contractor Related Party complying with Clauses 51.2.1 to 51.2.6 above and demonstrating to the Authority that it had taken all reasonable steps to verify any employee-related information, including any potential omissions, provided to it by the Authority or any Authority Related Party on or before the date of the relevant Approved Tasking Order under which the Loss arose, and subject always to Clause 51.12, the Authority shall indemnify the Contractor fully (for itself and on behalf of each Contractor Related Party) against any and all Loss incurred by any Contractor Related Party arising out of or in connection with the Commencement Transfer Allegation (including any costs associated with employing or terminating the employment of any Non-Transferring Employee, save that such indemnity shall not apply:

- 51.2.7 to any and all Loss directly attributable to any act or omission of any Contractor Related Party that contravenes Clause 51.2.6;

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- 51.2.8 to any final determination by an employment tribunal or Court of discrimination including sex, race, disability, gender reassignment, pregnancy and maternity, sexual orientation, religion or belief or age discrimination in relation to any alleged act or omission of any Contractor Related Party which occurs after such Contractor Related Party becomes aware of the relevant Commencement Transfer Allegation;
- 51.2.9 to any and all Loss that arises by reason of any improvement in the terms and conditions of employment of the relevant Non-Transferring Employee, where such improvement is authorised or implemented by any Contractor Related Party without the prior written approval of the Authority;
- 51.2.10 in relation to Clause 51.2.5, in the event that the Contractor elects not to give notice to terminate the employment of such Non-Transferring Employee as described in that Clause; or
- 51.2.11 in circumstances where any Contractor Related Party wishes to retain the relevant Non-Transferring Employee.
- 51.3 Subject to Clause 51.2 and Schedule N (Transfer Regulations), if, during and as a result of, the provision of the Services under this Agreement, the contract of employment (or any associated or related liabilities) of any person employed by any Contractor Related Party is, by reason of the Transfer Regulations, found or alleged to have effect as if originally made with the Authority (a "**Contractor Employee Transfer Allegation**"), then:
- 51.3.1 promptly upon becoming aware of any Contractor Employee Transfer Allegation (including the threat of any Contractor Employee Transfer Allegation) (and in any event within five (5) Business Days of becoming so aware), the applicable Party shall notify the other Party in writing (and any such awareness of any Contractor Related Party shall, for the purposes of this Clause 51.3, be imputed to the Contractor);
- 51.3.2 the Contractor shall (or shall procure that the relevant Contractor Related Party shall), as soon as reasonably practicable, either or both offer or confirm continued employment to such employee or take such other steps so as to effect a written withdrawal of the Contractor Employee Transfer Allegation;
- 51.3.3 if the Contractor Employee Transfer Allegation is not withdrawn or resolved, the Contractor shall notify the Authority, and the Authority may as soon as reasonably practicable and subject to compliance with its obligations at Clause 51.3.4(C), serve notice to terminate the employee's employment in accordance with his or her contract of employment; and
- 51.3.4 the Contractor shall indemnify the Authority fully against any and all Loss arising out of or in connection with any of the following liabilities incurred by the Authority in dealing with or disposing of the Contractor Employee Transfer Allegation:
- (A) any costs of employing the employee up to the date of dismissal where such employee has been dismissed in accordance with Clause 51.3.3;
 - (B) any liabilities acquired by virtue of the Transfer Regulations in relation to the employee;
 - (C) any liabilities relating to the termination of the employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - (1) to a failure by the Authority to act reasonably to mitigate the costs of dismissing such person;

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- (2) directly or indirectly to the procedure followed by the Authority in dismissing the employee; or
 - (3) to the acts or omissions of the Authority not wholly connected to the dismissal of that person;
 - (D) any liabilities incurred under a settlement of the employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
 - (E) reasonable administrative costs incurred by the Authority in dealing with the employee's claim or allegation, subject to a cap per employee of £5,000; and
 - (F) legal and other professional costs reasonably incurred.
- 51.4 The Authority shall be deemed to have waived its right to an indemnity under Clause 51.3.4 if it fails without reasonable cause to take any action in accordance with any of the timescales referred to in Clause 51.3 or in circumstances where the Authority agrees to retain the employee.
- 51.5 Subject to Clause 51.2 and Schedule N (Transfer Regulations), if, during and as a result of, the provision of the Services under this Agreement, the contract of employment (or any associated or related liabilities) of any person employed by the Authority is, by reason of the Transfer Regulations, found or alleged to have effect as if originally made with the Contractor, any Contractor Related Party (an "**Authority Employee Transfer Allegation**"), then:
- 51.5.1 promptly upon becoming aware of any Authority Employee Transfer Allegation (including the threat of any Authority Employee Transfer Allegation) (and in any event within five (5) Business Days of becoming so aware), the applicable Party shall notify the other Party in writing (and any such awareness of any Contractor Related Party shall, for the purposes of this Clause 51.5, be imputed to the Contractor);
 - 51.5.2 as soon as reasonably practicable, the Authority shall offer or confirm continued employment to such employee or take such other steps so as to effect a written withdrawal of the Authority Employee Transfer Allegation;
 - 51.5.3 if the Authority Employee Transfer Allegation is not withdrawn or resolved, the Authority shall notify the Contractor, and the Contractor (or the applicable Contractor Related Party) may as soon as reasonably practicable and subject to compliance with its obligations at Clause 51.5.4(C), serve notice to terminate the employee's employment in accordance with his or her contract of employment; and
 - 51.5.4 the Authority shall indemnify the Contractor (for itself and on behalf of the applicable Contractor Related Party) fully against any and all Loss arising out of or in connection with any of the following liabilities incurred by the applicable Contractor Related Party in dealing with or disposing of the Authority Employee Transfer Allegation:
 - (A) any costs of employing the employee up to the date of dismissal where such employee has been dismissed in accordance with Clause 51.5.3;
 - (B) any liabilities acquired by virtue of the Transfer Regulations in relation to the employee;
 - (C) any liabilities relating to the termination of the employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:

- (1) to a failure by the applicable Contractor Related Party to act reasonably to mitigate the costs of dismissing such person;
 - (2) directly or indirectly to the procedure followed by the applicable Contractor Related Party in dismissing the employee; or
 - (3) to the acts or omissions of the applicable Contractor Related Party not wholly connected to the dismissal of that person;
- (D) any liabilities incurred under a settlement of the employee's claim which was reached with the express permission of the Authority (not to be unreasonably withheld or delayed);
- (E) reasonable administrative costs incurred by the applicable Contractor Related Party in dealing with the employee's claim or allegation, subject to a cap per employee of £5,000; and
- (F) legal and other professional costs reasonably incurred.
- 51.6 Each Contractor Related Party shall be deemed to have waived their respective rights to an indemnity under Clause 51.5.4 if the relevant person fails without reasonable cause to take any action in accordance with any of the timescales referred to in Clause 51.5 or in circumstances where the applicable Contractor Related Party agrees to retain the employee.
- 51.7 The Dispute Resolution Procedure shall only apply to the provisions of Clause 51 (Transfer Regulations) and Schedule N (Transfer Regulations) to the extent that there is any Dispute between the Parties regarding the scope or operation of any of those provisions.
- 51.8 The Parties agree that there may be a transfer under the Transfer Regulations on termination or expiry of this Agreement and nothing in this Clause 51 (Transfer Regulations) is intended to prevent or avoid the proper application of the TUPE Regulations.

- 51.9 In the event that, in connection with the commencement of any Services under this Agreement, the Parties determine that the Transfer Regulations shall apply so as to transfer the employment of any Transferring Employee (or any liability relating to such Transferring Employee) to any Contractor Related Party, the terms of such transfer will be agreed pursuant to the Agreed Tasking Order, including terms to cover the possible variation in costs that may occur from meeting the Transfer Regulations and the New Fair Deal policy.
- 51.10 Should the implications of the proposed transfer under Clause 51.9 not be acceptable to either Party, they reserve the right to refuse to accept the Approved Tasking Order so as not to enact the Relevant Transfer.
- 51.11 The arrangements for the provision of employee-related information in the period prior to expiry or termination of this Agreement and in the event of the application of the Transfer Regulations are set out in Schedule N (Transfer Regulations).
- 51.12 The indemnity to be provided by the Authority pursuant to Clause 51.2 above shall not be provided in relation to any Loss suffered by the Contractor or any Contractor Related Party arising out of the transfer of any Non-Transferring Employee who, at the date of the relevant Approved Tasking Order, was an employee of any third party retained directly or indirectly by or on behalf of the Authority in relation to the provision of engineering services for the Authority.
- 51.13 The Authority shall, in any Tasking Order Form (Part A) specify whether:
- 51.13.1 there is, or there is a risk that, a third party retained directly or indirectly by or on behalf of the Authority in relation to the provision of engineering services for the Authority providing a service to the Authority which service is be provided (in whole or in part) as a Service by the Contractor under this Agreement; and
 - 51.13.2 the Authority is aware, having taken all reasonable steps to verify any employee-related information and having taken all due care to provide full and complete information that there is any risk that TUPE might apply in respect of the Service to be provided under the relevant Approved Tasking Order.

PART VII- PRICING, PAYMENT, PERFORMANCE AND INCENTIVISATION MECHANISM

52. NOT USED

53. INVOICING AND PAYMENT

53.1 Performance Management

The Contractor's and Authority's performance under this Agreement shall be monitored in accordance with the Performance Regime.

53.2 Claims for Payment

Where the Contractor is entitled to seek payment from the Authority in accordance with the Payment Mechanism or is otherwise due to be paid a sum by the Authority pursuant to this Agreement, the Contractor shall claim payment of the relevant amount in accordance with this Clause 53 (*Invoicing and Payment*).

53.3 Authority Payment System

53.3.1 The Parties acknowledge and agree that at the Agreement Commencement Date the Contractor has put in place the necessary arrangements to be able to use the Authority Payment System.

53.3.2 The Authority shall within thirty (30) days after the Agreement Commencement Date provide Defence Business Services with a completed DEFFORM 57 and other relevant information to allow this Agreement to be set up on the Authority Payment System.

53.3.3 Where the Contractor is entitled to seek payment of a sum from the Authority in accordance with the Payment Mechanism or is otherwise due to be paid a sum by the Authority pursuant to this Agreement, the Contractor shall submit an invoice using a properly prepared message structure and format in accordance with the Authority Payment System, no later than ninety (90) Business Days after the date on which such right to seek payment of or to be paid such sum arises ("**Payment Longstop Date**"). The Contractor shall be deemed to have waived its right to seek or receive payment for T&S Costs if it fails to submit an invoice within the Payment Longstop Date.

53.3.4 Claims for payment shall be accompanied by a statement certified by the Contractor's Representative that the amount specified in the invoice is due to the Contractor pursuant to this Agreement together with each of the reports required to be issued under Clause 43 (Monthly Contract Reviews).

53.3.5 Upon receipt of the invoice the Authority shall within thirty (30) days either:

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- (A) enter the relevant details in the Authority Payment System, indicating confirmation of the relevant amount and notify the Contractor of the relevant purchase order number for the relevant amount; or
 - (B) notify the Contractor that:
 - (1) the Authority is withholding all or any part of the amount claimed by the Contractor pursuant to Clause 54 (*Disputed Amounts*), giving reasons for withholding such Disputed Amounts; and
 - (2) any amount claimed by the Contractor that is not a Disputed Amount shall constitute a valid, properly completed return for payment (and the Authority shall enter the relevant details in the Authority Payment System in respect of such amount).
- 53.3.6 Subject to Clause 54 (*Disputed Amounts*), the Authority shall no later than thirty (30) days after receipt of an invoice, pay the Contractor the relevant amount stated in such invoice.
- 53.3.7 The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies either under this Agreement or otherwise.

54. DISPUTED AMOUNTS

- 54.1 The Authority may withhold any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, but shall pay any undisputed amounts on or before the due date for payment.
- 54.2 Within five (5) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 53.3.5(B) the Contractor shall respond by notifying the Authority as to whether or not it agrees with the reasons stated in that notice and the grounds for such agreement or disagreement. If the Contractor indicates:
- 54.2.1 that it does not agree, the Authority shall be entitled to retain on a temporary basis, pending resolution of the Dispute regarding the Disputed Amount or agreement by the Contractor, any amounts withheld pursuant to Clause 53.3.5(B); or
 - 54.2.2 that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:
 - (A) to retain on a permanent basis any amounts withheld pursuant to Clause 53.3.5(B); or
 - (B) to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount calculated in accordance with Clause 55 (*Interest on Late Payment*).
- 54.3 If the Contractor responds pursuant to Clause 54.2 that it does not agree with all or any of the reasons stated in any notice served by the Authority pursuant to Clause 53.3.5(B), the matter or matters in question shall be determined pursuant to Clause 64 (*Dispute Resolution Procedure*).
- 54.4 If it is agreed or otherwise determined pursuant to Clause 64 (*Dispute Resolution Procedure*) that:
- 54.4.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or

54.4.2 the Authority has withheld any amount which the Contractor was entitled to be paid;
or

54.4.3 the Contractor has been paid any amount which the Contractor was not entitled to be paid;

the Authority shall:

(A) subject to Clause 54.5, where Clause 54.4.2 applies, promptly carry out Receipting of such amount so that it is paid to the Contractor as soon as reasonably practicable; or

(B) where Clause 54.4.3 applies, be entitled to deduct such amount from the next payment due to the Contractor or, if no further amounts are due under the Agreement, the Authority shall be entitled to recover such amount from the Contractor as a debt due,

in each case with interest on the relevant amount calculated in accordance with Clause 55 (*Interest on Late Payment*).

54.5 For the purposes of Clause 55 (*Interest on Late Payment*), the due date for payment of any amount to be paid to the Contractor pursuant to Clause 54.4.3(A), shall be deemed to be the Revised Due Date if as a consequence of a Dispute commenced by the Contractor pursuant to Clause 54.3, the due date for payment of such amount in accordance with Clause 53 (*Invoicing and Payment*) would otherwise be later than the Revised Due Date.

55. INTEREST ON LATE PAYMENT

Except if otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Agreement is not paid within thirty (30) Business Days of the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the Parties that the Prescribed Rate provides the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

56. RECOVERY OF SUMS DUE

Subject to Clause 86 (*Liability*), if at any time during the Term any sum of money is recoverable from or payable by the Contractor to the Authority under this Agreement or otherwise, the Authority, upon notice to the Contractor specifying the grounds for deduction and the amount of the deduction in relation to each ground, may deduct (or procure the deduction of) the same from any sum due to the Contractor (or which at any time thereafter may become due to the Contractor) under this Agreement or any other Agreement with the Authority or any other Government Body, or, if no further amounts are due under the Agreement, the Authority shall be entitled to recover such amount from the Contractor as a debt due. Any exercise by the Authority of its rights under this Clause 56 (*Recovery of Sums Due*) shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

57. EXCLUSION OF CONTRACTOR SET OFF

Not Used

58. VAT ON PAYMENTS

DEFCON 513 Edn 11/16

59. TAX NON-COMPLIANCE

DEFCON 670 EDN. 02/17

PART VIII– SUPERVENING EVENTS

60. BUSINESS CONTINUITY AND FORCE MAJEURE

- 60.1 The Contractor's draft Business Continuity Plan is included as Appendix 1 to Schedule M (*Business Continuity Plan*).
- 60.2 Within three (3) months of the Agreement Commencement Date, the Contractor shall submit to the Authority a revised Business Continuity Plan, updated using the principles set out in Schedule M (*Business Continuity Plan*).
- 60.3 Within one (1) month of receiving the updated Business Continuity Plan the Authority may, acting reasonably:
- 60.3.1 accept the updated Business Continuity Plan; or
 - 60.3.2 request amendments to the updated Business Continuity Plan on the basis that the plan submitted by the Contractor does not align with the principles set out in Schedule M (*Business Continuity Plan*).
- 60.4 If amendments are required to the updated Business Continuity Plan in accordance with Clause 60.3.2, the Contractor shall make such amendments within two weeks of the Authority's request, following which if the Authority does not accept the further updated Business Continuity Plan, either Party may give notice of a Dispute.
- 60.5 The Contractor shall ensure that it is able to implement the Business Continuity Plan prepared in accordance with Clauses 60.2 and 60.3 throughout the Term in accordance with its terms.
- 60.6 **Force Majeure Event**
- 60.6.1 On the occurrence of a Force Majeure Event, the Party affected by the Force Majeure Event ("**Affected Party**") shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of the adverse effect on the performance of the obligations of the Affected Party under this Agreement and any action it has taken or proposes to take to mitigate this effect.
 - 60.6.2 Subject to having complied with Clauses 60.6.1 to 60.6.3 (as applicable), the obligations of the Affected Party under this Agreement shall, to the extent affected by the Force Majeure Event, be suspended (to the extent affected) for a period equal to the duration of the Force Majeure Event.
 - 60.6.3 As soon as practicable following such notification, the Parties shall consult with each other and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.
 - 60.6.4 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer has an adverse effect on the performance of the obligations of the Affected Party under this Agreement and, in such circumstances, the Affected Party shall resume the performance in full of its obligations under this Agreement.
- 60.7 **Effect of a Force Majeure Event**
- 60.7.1 The Parties shall at all times during and following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any such Force Majeure Event.
 - 60.7.2 The Contractor shall at all times during which a Force Majeure Event is subsisting, and following the occurrence of a Force Majeure Event, take all steps in accordance

with Good Industry Practice to overcome or minimise the consequences of any such Force Majeure Event.

60.7.3 If the Contractor is the Affected Party, the Contractor shall:

- (A) provide updates in writing to the Authority on the effect of the Force Majeure Event and actions being taken (or proposed to be taken) to mitigate its effect (such updates to be provided as often as reasonably required by the other Party); and
- (B) provide any further information required by the Authority in respect of the Force Majeure Event.

60.7.4 Provided that Clauses 60.7.1 to 60.7.3 (as applicable) have been complied with, no Party shall be entitled to bring a claim for a breach of obligations under this Agreement by an Affected Party (and an Affected Party shall not incur any liability to the other Party for any Losses incurred by that other Party) to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out such obligations by that Force Majeure Event.

60.7.5 Subject to Clause 0 (Termination for Long-Term Force Majeure), the Authority shall not be entitled to terminate this Agreement for a Contractor Event of Default to the extent that such Contractor Event of Default arises from a Force Majeure Event.

60.7.6 Either Party may terminate this Agreement pursuant to the provisions of Clause 0 (Termination for Long-Term Force Majeure).

60.8 **Failure to agree**

If the Parties cannot agree that a Force Majeure Event has occurred, the Parties shall resolve the matter in accordance with Clause 64 (*Dispute Resolution Procedure*).

PART IX – TERMINATION

61. EARLY TERMINATION

61.1 Termination Events

Where there is a Contractor Event of Default or an Authority Event of Default, this Agreement or any Approved Tasking Order may be terminated in accordance with this Clause 61 (*Early Termination*).

61.1.1 Contractor Events of Default

Each of the following constitutes a "**Contractor Event of Default**"

(A) **A breach of any of the following DEFCONs:**

DEFCON 515 (02/17) Bankruptcy And Insolvency

DEFCON 520 (05/18) Corrupt Gifts And Payments Of Commission

DEFCON 658 (10/17) Cyber

DEFCON 659A (02/17) Security Measures

DEFCON 670 (02/17) Tax Compliance

where the Authority has the right to terminate the Agreement according to the clauses of the DEFCON.

(B) **Failure to Remedy**

A failure by the Contractor to remedy a breach specified in a Final Performance Warning Notice issued in accordance with Clause 61.2.3.

(C) **Failure to satisfy Commencement Conditions**

A failure to satisfy the Commencement Conditions in accordance with Clause 4.6 (Failure to Satisfy Commencement Conditions).

(D) **Breach of Warranties or Representations**

Any warranty or representation given to the Authority in or pursuant to Clause 11 of this Agreement is, or proves to have been in any material respect, untrue, incorrect or misleading when made at the date of this Agreement.

(E) **Persistent PI Failures**

Any PI Failure continues for 4 consecutive PI Periods.

61.1.2 Material Breach Notice

if a Contractor Event of Default has occurred, the Authority may terminate this Agreement by serving notice on the Contractor (a "**Material Breach Notice**") stating:

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- (A) that the Authority is terminating this Agreement for Contractor Event of Default;
- (B) the type and nature of Contractor Event of Default that has occurred, giving reasonable details; and
- (C) that this Agreement shall terminate on the Termination Date specified in the Material Breach Notice, provided such date shall be a minimum of 3 (three) months from the date of receipt by the Contractor of the Material Breach Notice in accordance with Clause 13.4.

61.1.3 If the Authority determines that a Contractor Event of Default relates to an Approved Tasking Order, the Authority may terminate the relevant Approved Tasking Order by serving notice on the Contractor in the same terms as those set out in Clause 61.1.2 (A), (B) and (C) but substituting “this Approved Tasking Order” as appropriate for “this Agreement”. To avoid doubt, such a notice served under this Clause 61.1.3 shall not terminate this Agreement.

61.1.4 Where this Agreement is terminated in accordance with Clause 61.1.2 no compensation shall be paid to the Contractor. For the avoidance of doubt the Contractor shall be entitled to payment for all Services rendered in accordance with this Agreement and any Approved Tasking Orders up to the Termination Date

61.1.5 Where the Authority requests that individual Approved Tasking Orders continue following termination of the Agreement the Authority shall make payment in full for all associated Services rendered under such Approved Tasking Orders in accordance with the payment provisions of the relevant Approved Tasking Orders.

61.2 Remediation and Termination for Poor Performance Breach

61.2.1 Where there is a breach of this Agreement by the Contractor which does not otherwise give rise to a Contractor Event of Default then the Authority may serve a notice on the Contractor (the “**Performance Warning Notice**”):

- (A) specifying that it is a formal warning notice;
- (B) giving reasonable details of the breach and specifying the Authority's concerns;
- (C) stating that such breach may become a Contractor Event of Default pursuant to limb (B) of Clause 61.1.1 if it recurs and may subject to clause 61.2.4 result in a termination of this Agreement; and
- (D) requiring the Contractor to determine within twenty (20) Business Days of receipt of the Performance Warning Notice whether or not such breach is remediable, and if so, what steps the Contractor proposes to take to remedy the breach (“**the Remediation Programme**”), such programme to be agreed in accordance with clause 61.2.2 (Remediation Programme).

61.2.2 Remediation Programme

- (A) The Remediation Programme shall specify in detail how the Contractor proposes to remedy a Performance Warning Breach, the steps required to remedy the Performance Warning Breach (including milestones to be met by specific dates), the anticipated costs and other consequences associated with the remediation and the latest date by which the Contractor anticipates that the Performance Warning Breach will be remedied.
- (B) Where the Contractor proposes a Remediation Programme in accordance with Clause 61.2.2(A), the Authority shall within twenty (20) Business Days from the date of receipt of the proposed Remediation Programme notify the

Contractor whether the Authority accepts the proposed Remediation Programme (such acceptance not to be unreasonably withheld).

- (C) Where the Authority notifies the Contractor that it does not accept the Remediation Programme, the Authority and the Contractor shall endeavour within the following twenty (20) Business Days to agree any necessary amendments to the Remediation Programme. In the absence of agreement within such twenty (20) Business Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 64 (Dispute Resolution Procedure).

61.2.3

Following service of a Performance Warning Notice, if the breach specified or a substantially similar breach has continued beyond any specific deadline set out in the Performance Warning Notice or has recurred one or more times within six (6) months after the date of receipt by the Contractor of the Performance Warning Notice, then the Authority may serve another notice on the Contractor (the "**Final Performance Warning Notice**"):

- (A) specifying that it is the Final Performance Warning Notice;
- (B) stating that the breach specified or a substantially similar breach has been the subject of a Performance Warning Notice; and
- (C) stating that if such breach continues beyond any specific deadline (not being less than twenty (20) Business Days after the date of receipt by the Contractor of the Final Performance Warning Notice), in accordance with Clause 13.4 or recurs one (1) or more times within three (3) months after the date of receipt by the Contractor of the Final Performance Warning Notice, the same shall constitute a Contractor Event of Default under limb (B) of Clause 61.1.1.

- 61.2.4 In exercising its discretion to terminate this Agreement, or any Approved Tasking Order pursuant to this Clause 61.2, the Authority will act reasonably and acknowledges that termination of this Agreement or any Approved Tasking Order is its remedy of last resort. In exercising its discretion to terminate this Agreement, or any Approved Tasking Order pursuant to Clauses 61.5, or 61.8 the Contractor will act reasonably and acknowledges that termination of this Agreement or any Approved Tasking Order is its remedy of last resort.

61.3 Termination for Change of Control of Contractor

The Authority, acting reasonably, may terminate this Agreement following receipt of a notice from the Contractor pursuant to Clause 10, informing the Authority that a change in control has taken place. The Authority shall give not less than 3 months' written notice to the Contractor, of its intention to exercise its right of termination under this Clause. In the event of termination pursuant to this Clause, the Contractor may request the Authority to consider making a payment in accordance with clause 6 of DEFCON 566 (Edn 03/18) as amended by this Clause 61.3. Such payment, if any, made by the Authority to the Contractor pursuant to this DEFCON, shall be made on the Termination Date.

61.4 Termination for Convenience

- 61.4.1 The Authority may terminate any Approved Tasking Order in accordance with the terms of DEFCON 656A or DEFCON 656B as applicable to the relevant Approved Tasking Order value. For the avoidance of doubt, the provisions of this Clause 61.4 shall not entitle the Authority to terminate this Agreement in whole or part. In respect of such terminations the following notice periods shall apply:

- (A) Mode 1 Approved Tasking Orders: 5 (five) Business Days or as otherwise agreed between the Parties;
- (B) Mode 2 Approved Tasking Orders: 20 (twenty) Business Days for Approved Tasking Orders under 5 (five) million pounds and 60 (sixty) Business Days for Approved Tasking Orders over 5 (five) million pounds or as otherwise agreed between the Parties;
- (C) Mode 3 Approved Tasking Orders: 60 (sixty) Business Days for Approved Tasking Orders under 5 (five) million pounds or 120 (one hundred and twenty) Business Days for Approved Tasking Orders over 5 (five) million pounds;
- (D) Mode 4 Approved Tasking Orders and Approved Innovation Projects: Termination of Approved Tasking Order to be as agreed between the Parties at the time of entering into the Approved Tasking Order. The Parties shall agree a default termination period by Strategic Review; and
- (E) Where multiple Approved Tasking Orders representing in excess of 50% of the current Approved Tasking Orders under this Agreement are being terminated within 20 Business Days of each other, the termination of all affected Approved Tasking Orders shall occur on the expiry of 240 Business Days' notice unless otherwise agreed between the Parties and recorded in a termination plan which shall be agreed by the Delivery Partner Performance Committee.

61.4.2 Should the Authority invoke termination for convenience on any Approved Tasking Order, any allocated savings may be reduced accordingly.

61.5 **Termination by Contractor for Non-Payment by the Authority**

- 61.5.1 Notwithstanding any Disputed Amounts, if at any time during the term of the Agreement the Authority has failed to pay an amount exceeding 10 (ten) million pounds (to be varied by the percentage increase or decrease in the Consumer Prices Index (all items) (United Kingdom) during the previous Contract Year)) by the date due for payment under clause 53 (Invoicing and Payment) and such amount remains unpaid after the expiry of 30 days from the Contractor delivering a written notice demanding payment to the Authority, the Contractor may terminate this Agreement by serving notice on the Authority stating:
- (A) that the Contractor is terminating this Agreement pursuant to this Clause 61.5;
 - (B) the amount outstanding, as set out in Clause 61.5.2; to be paid on the Termination Date; and
 - (C) that this Agreement shall terminate on the Termination Date specified in the Contractor's notice.
- 61.5.2 The amount outstanding shall comprise:
- (A) such sum as is undisputed or determined as payable to the Contractor pursuant to or arising under this Agreement;
 - (B) such interest at the Prescribed Rate on such sum commencing on the due date for payment and expiring on the actual date of payment; and
 - (C) payment for Services performed under this Agreement and under any Approved Tasking Order up to the date of termination of this Agreement. For the avoidance of doubt such payment would not include payments for any Approved Tasking Orders that the Authority requests to continue after termination of this Agreement, which shall be paid in line with the payment schedules of the Approved Tasking Orders.

61.6 Not Used

61.7 Termination of this Agreement on the Authority Right to Break

In the event that the Authority exercises its right to terminate this Agreement pursuant to Clause 5.3 (Authority Right to Break), the Contractor shall be entitled to be paid for Services performed under this Agreement and under any Approved Tasking Order up to the date of termination of this Agreement; and for any Approved Tasking Orders which, at the Authority's request, continue after termination of this Agreement, which shall be paid in line with the payment schedules of the Approved Tasking Orders..

61.8 Termination for Long-Term Force Majeure

If the performance by the Authority or the Contractor of substantially all or all of its obligations under this Agreement is materially prevented, hindered or delayed by reason of a Force Majeure Event:

- 61.8.1 for a period of more than one hundred and twenty (120) consecutive days, the Authority may terminate this Agreement on not less than thirty (30) days' written notice to the Contractor (such notice to take effect on the date of receipt by the Contractor); and
- 61.8.2 other than in relation to a Force Majeure Event which arises wholly or in part as a result of war, for a period of more than one hundred and twenty (120) consecutive days, the Contractor may terminate this Agreement on not less than thirty (30) days' written notice to the Authority (such notice to take effect on the date of receipt by the Authority)

PROVIDED THAT the terminating party has referred the proposed termination to the Delivery Partner Performance Committee for confirmation that the decision to terminate is fair and reasonable in the circumstances.

61.8.3 In the event that this Agreement is terminated pursuant to this Clause 61.8, the Contractor shall be entitled to be paid for Services performed under this Agreement and under any Approved Tasking Order up to the date of termination of this Agreement; and for any Approved Tasking Orders which, at the Authority's request, continue after termination of this Agreement, which shall be paid in line with the payment schedules of the Approved Tasking Orders.

62. CONSEQUENCES OF TERMINATION OR EXPIRY

62.1 ACCRUED RIGHTS AND OBLIGATIONS AND SURVIVORSHIP

The termination or expiry of this Agreement for any reason:

62.1.2 shall be without prejudice to any rights or obligations which shall have accrued or become due prior to the Expiry Date or Termination Date (as applicable);

62.1.3 shall not prejudice the rights or remedies which either Party may have in respect of any breach of the terms of this Agreement prior to the Expiry Date or Termination Date (as applicable);

62.1.4 shall not affect:

- 62.1.4.1 Clause 1 (Definitions and Interpretations);
- 62.1.4.2 Clause 3 (Governing Law);
- 62.1.4.3 Clause 18 (Severability);
- 62.1.4.4 Clause 19 (Variation);
- 62.1.4.5 Clause 23 (No Partnership, Agency or Employment Relationship);
- 62.1.4.6 Clause 24 (Counterparts);
- 62.1.4.7 Clause 3 (Governing Law);
- 62.1.4.8 Clause 25 (Contracts (Rights of Third Parties) Act 1999);
- 62.1.4.9 Clause 26 (Entire Agreement);
- 62.1.4.10 Clause 50 (Non-solicitation);
- 62.1.4.11 Clause 51 (TUPE);
- 62.1.4.12 Clause 53 (Invoicing and Payment);
- 62.1.4.13 Clause 54 (Disputed Amounts);
- 62.1.4.14 Clause 55 (Interest on Late Payment);
- 62.1.4.15 Clause 58 (VAT on Payments);
- 62.1.4.16 Clause 55 (Interest on Late Payment);
- 62.1.4.17 Clause 62 (Consequences of Termination or Expiry);
- 62.1.4.18 Clause 63 (Post Termination or Expiry Obligations to Assist);
- 62.1.4.19 Clause 64 (Dispute Resolution Procedure);
- 62.1.4.20 Clause 69 (Ownership of Intellectual Property);
- 62.1.4.21 Clause 70.2;
- 62.1.4.22 Clause 77 (Data Protection);
- 62.1.4.23 Clause 78 (Confidentiality);
- 62.1.4.24 Clause 81 (Disclosure);
- 62.1.4.25 Clause 82 (Contractor Right to Request Confidentiality);

- 62.1.4.26 Clause 83 (Publication);
- 62.1.4.27 Clause 84 (Freedom of Information Act);
- 62.1.4.28 Clause 85 (Insurance)
- 62.1.4.29 Clause 86 (Liability);
- 62.1.4.30 Schedule E (Dispute Resolution Procedure);
- 62.1.4.31 Schedule F (Payment and Performance Management);
- 62.1.4.32 Paragraph 2.1 of Schedule G (COI Compliance Regime);
- 62.1.4.33 Paragraph 2.3.2 of Schedule G (COI Compliance Regime);
- 62.1.4.34 Paragraph 4.3 of Schedule G (COI Compliance Regime);
- 62.1.4.35 Paragraph 4.4 of Schedule G (COI Compliance Regime);
- 62.1.4.36 Schedule H (Commercially Sensitive Information);
- 62.1.4.37 Paragraphs 2.5, 2.9 of Schedule I (Management and Liability for Engaged Personnel);
- 62.1.4.38 Schedule L (Insurances); and
- 62.1.4.39 Schedule P (Exit Strategy);

62.1.5 shall not affect any indemnity given under the terms of this Agreement; and

62.1.6 shall not affect any provision of this Agreement (including any provision in Schedule G (COI Compliance Regime), Schedule I (Management and Liability for Engaged Personnel) and Schedule N (Transfer Regulations)) that expressly states that it will continue to have effect after the expiry or termination of this Agreement.

62.2 **NOT USED**

63. POST TERMINATION OR EXPIRY OBLIGATIONS TO ASSIST

63.1 Exit Plan

- 63.1.1 The Contractor shall develop an exit plan in accordance with the principles set out in Schedule P (*Exit Strategy*) and the Parties shall use their reasonable endeavours to agree the form of such exit plan within six months of the date of this Agreement. Once agreed, such exit plan shall be the "**Exit Plan**" for the purposes of this Agreement.
- 63.1.2 The Contractor shall comply with the Contractor's Exit Plan agreed in accordance with Clause 63.1.1 (*Exit Plan*) to ensure that the Contractor can at all times satisfy its obligations under Clause 63.2 (*Obligation to Assist*) following the termination or expiry of the Agreement.
- 63.1.3 The Contractor shall update the Exit Plan twelve (12) months prior to the end of the Term in accordance with the provisions of the Exit Plan and shall ensure that it is able to implement the Exit Plan throughout the Term in accordance with its terms. All such updates must be approved by the Authority.
- 63.1.4 All costs incurred in developing, updating and implementing the Exit Plan shall be payable by the Contractor.

63.2 Obligation to Assist

Following termination or expiry of this Agreement, the Contractor shall continue to implement the Exit Plan to ensure the orderly and efficient transition of all activities undertaken or to be undertaken by the Contractor and Contractor Related Parties under this Agreement to the Authority and Authority Related Parties and, for a period of one (1) month following the Expiry Date or Termination Date (as applicable), the Contractor and Contractor Related Parties shall co-operate with all reasonable instructions of the Authority in connection with this transition.

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The Contractor shall not be entitled to charge a fee for its costs in complying with this Clause 63.2 (*Obligation to Assist*).

PART X – DISPUTE RESOLUTION

64. DISPUTE RESOLUTION PROCEDURE

- 64.1 Disputes arising out of or in connection with this Agreement, whether or not expressly stated to be subject to this Clause 64 (*Dispute Resolution Procedure*) shall be resolved in accordance with the Dispute Resolution Procedure.
- 64.2 Neither Party shall commence any Legal Proceedings until it has followed the Dispute Resolution Procedure, provided that nothing in the Dispute Resolution Procedure shall prevent a Party from seeking interim or interlocutory relief in any court.
- 64.3 Notices given in respect of a Dispute shall comply with Clause 13 (Notices) and shall not be given by email.

PART XI – SECURITY

65. SECURITY MEASURES

65.1 DEFCON 659A Edn. 02/17

66. OFFICIAL-SENSITIVE SECURITY REQUIREMENTS

66.1 DEFCON 660 Edn. 12/15

67. SECURITY ASPECTS LETTER

67.1 The Authority shall advise the Contractor of the Clauses applicable to security in each Tasking Order Form when it issues section 1 of the Tasking Order Form (Part A) to the Contractor:

67.2

67.2.1 the Authority shall include the "OFFICIAL, OFFICIAL-SENSITIVE and SECRET Security Clauses for Contracts" in each Tasking Order Form where security related information classified as OFFICIAL, OFFICIAL-SENSITIVE or SECRET forms part of that Tasking Order Form; and

67.2.2 the Contractor shall sign and return to the Authority a Security Aspects Letter where issued with the Tasking Order Form.

67.3 The Authority may amend the conditions relating to Clause 65 (Security Measures) in the event of the Government changing the security classification system.

68. CYBER

68.1 DEFCON 658 Edn. 10/17.

68.2 The Cyber Risk Level for this Agreement is "low" and the Cyber Risk Level for any Approved Tasking Order is "low" unless the Contractor is notified otherwise by the Authority in the Approved Tasking Order.

PART XII– INTELLECTUAL PROPERTY, INFORMATION AND DISCLOSURE

69. OWNERSHIP OF INTELLECTUAL PROPERTY

- 69.1 Nothing in this Agreement shall operate to change the ownership of: (i) the Contractor Background IPR, which shall remain vested in the Contractor or the third party that has licenced use of that IPR to the Contractor (as applicable); or (ii) the Authority IPR which shall remain vested in the Authority.
- 69.2 All IPR created in the delivery of the Services shall be owned by the Authority in accordance with DEFCON 703 Edition 08/13, except in respect of the following types of IPR which shall be owned as specified below:
- 69.2.1 the IPR comprised in any methods, models or processes relating to the programme management, project management or methodology for delivery of the Services, including the documented form of those incorporated in the Operating Manual, which may be developed further during the performance of the Services, shall vest in the Contractor and the Authority shall be entitled to use that IPR in accordance with the provisions of DEFCON 705 Edition 11/02 relating to Limited Rights Versions and Limited Rights Information;
- 69.2.2
- 69.2.3 the IPR comprised in any scientific or technical designs created as a result of carrying out the Services shall be owned in accordance with Schedule K (Intellectual Property – Rights in Technical Data). In respect of each Approved Tasking Order, the Authority and Contractor shall agree and specify, in the Approved Tasking Order, Technical Data that is subject to Limited Rights;
- 69.2.4 the Contractor shall not sell any Articles developed under this Agreement, otherwise than for the purposes of the United Kingdom Government, or grant any licence to manufacture such Articles, or any materials or processes the design or development of which was created in the production of the Articles, without first agreeing with the Authority the sum or sums (if any) which should reasonably be paid to the Authority by the Contractor in respect of such sale or grant having regard, among other things, to the amounts paid or payable to the Contractor by the Authority under this Agreement;
- 69.2.5 DEFCON 14 Edition 11/05 shall apply to any inventions which are created as a result of carrying out the Services;
- 69.2.6 subject to Clauses 69.2.7 and 69.2.8, the IPR in any software which is created as a result of, or incidental to, carrying out the Services but which does not form part of a Contractor Deliverable, shall vest in the Contractor and the Contractor hereby grants (and shall procure that any Aurora Partner Sub-contractor grants) to the Authority a perpetual, irrevocable, non-exclusive, royalty-free, worldwide licence to use the IPR in such software for the purpose of receiving the benefit of this Agreement and the Services;
- 69.2.7 IPR in any Deliverable Software (as defined in DEFCON 91 Edition 11/06) shall be owned, used and accessed as specified in DEFCON 91 Edition 11/06; and
- 69.2.8 IPR in any software which is created in carrying out the Services and is a modification to any software owned by the Authority or by a third party contractor to the Authority who has developed the software for and on behalf of the Authority, shall vest in the Authority.

- 69.3 The provisions of sub-clauses 69.2.1 and 69.2.3 - 69.2.8 shall not apply to any IPR arising from Services provided by the Contractor under Mode 1 or to any IPR in the Engineering Services Catalogue. The ownership of all such IPR shall be vested in the Authority in accordance with DEFCON 703 Edition 08/13.
- 69.4 In respect of any Approved Tasking Order entered into under this Agreement, the Parties shall be free to agree terms relating to the ownership and/or use of IPR, created under that Approved Tasking Order, which are different from the provisions of Clause 69.2. Such terms shall be recorded in the relevant Approved Tasking Order and shall apply to any IPR created in the performance of Services under that Approved Tasking Order in place of the provisions of Clause 69.2.

70. LICENCE OF AUTHORITY IPR

- 70.1 The Authority hereby grants to the Contractor, and to each Contractor Related Party, for the Term only, a non-exclusive, royalty-free, non-transferable, sub-licensable licence to use all such Authority IPR to the extent necessary for the purposes of the Contractor's performance of this Agreement and the Services. The Authority may at its discretion and by written notice to the Contractor impose restrictions on the Contractor's or any Contractor Related Party's use of that IPR to specific purposes within the scope of this Agreement and the Services.
- 70.2 The Authority gives no warranty as to the suitability of any Authority IPR for the purpose of the Contractor or any Contractor Related Party performing the obligations of the Contractor under this Agreement and the Services. The Contractor shall not (and shall procure that any Contractor Related Party shall not) do anything which will prejudice the rights of ownership by the Crown or the Authority of any of the Authority IPR.
- 70.3 The Contractor and the Contractor Related Parties shall have no other rights to use the Authority IPR other than as set out in this Agreement.

71. NOT USED

72. NOT USED

73. PROTECTION OF INFORMATION

- 73.1 Notwithstanding Clause 46 (Government Furnished Assets and Contractor Assets), in respect of all information, documents and other materials in any form and any other articles used for the purposes of this Agreement, either or both relating to or embodying any Authority IPR, or Third Party IPR or Contractor Background IPR, or on which any such IPR is recorded, the Contractor shall:
- 73.1.1 mark that information with a notice regarding confidentiality or ownership as the Authority may notify from time to time and shall not delete or modify any copyright notices contained within the information, documents, other materials or articles;
- 73.1.2 ensure the back-up and storage in safe custody of all data, materials and documents in accordance with JSP 440, those back-ups to be available to the Authority on reasonable request; and
- 73.1.3 promptly restore the items referred to in Clause 73.1.2 if they are lost or corrupted.

74. CONTRACTOR'S IPR INDEMNITY

74.1 DEFCON 632 (Edn 08/12).

75. FURTHER ASSURANCES

A Party shall immediately notify the other Party in writing (which for this purpose does not include email) if it becomes aware of any actual, suspected or threatened infringement of, or other claim in relation to either the Authority IPR or Intellectual Property Rights owned by the Contractor. The Party whose Intellectual Property is affected by such infringement or claim (the "Affected Party") shall, in its discretion, decide what action, if any, to take and any award of costs or damages or other compensation payment recovered shall be for the account of that Party. The other Party shall (and, in the case of the Contractor, shall procure that any Contractor Related Party shall) (at the Affected Party's cost) provide any assistance which the Affected Party requires in connection with any of these matters.

76. USE AND SHARING OF KNOW HOW

Subject to Clause 78 (*Confidentiality*), the Contractor shall (and shall procure that any Aurora Partner Sub-contractor shall), save to the extent prohibited by Applicable Law and any rights of or obligations to Third Parties), share information and know-how relating to the Agreement and the Services with the Authority and, as directed by the Authority, with Authority Related Parties (including contractors and service providers of the Authority providing equivalent services in relation to any other areas of DE&S) and other Third Parties.

77. DATA PROTECTION

77.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority and the Contractor will be considered Joint Controllers and that there is no controller to processor relationship under this Agreement. The Authority and the Contractor will regularly disclose and share with each other, Personal Data, which is disclosed by a Party in connection with or arising out of performance of its respective obligations set out in this Agreement and in particular in Schedule A (Requirements).

77.2 Each Controller agrees that it shall:

77.2.1 ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes

77.2.2 give full information to any Data Subject whose Personal Data may be processed under this Agreement of the nature of such processing. For the avoidance of doubt this includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by, or as the case may be transferred to one or more of the Permitted Recipients, their successors and assignees;

77.2.3 process the Shared Personal Data only for the Agreed Purposes

77.2.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

77.2.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;

77.2.6 ensure that it has in place appropriate Protective Measures, reviewed and approved by the other Controller, to protect against unauthorised or unlawful

processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;

77.2.7 not transfer any Personal Data received from the Data Discloser outside the EEA unless the transferor:

- (A) complies with the provisions of Article 26 of the GDPR (in the event the third party is also a Joint Controller); and
- (B) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

77.3 Each Controller shall notify the other Controller immediately if it considers that there has been any breach of the Data Protection Legislation in respect of Shared Personal Data. This should include the actions and mitigations that will be enacted by the Controller in breach to prevent any reoccurrence.

77.4 Each Controller shall assist the other Controller in in complying with all applicable requirements of the Data Protection Legislation and in dealing with any complaint, communication or request made under the Data Protection Legislation. In particular, each Controller shall:

- 77.4.1 consult with the other Controller about any notices given to Data Subjects in relation to the Shared Personal Data;
- 77.4.2 promptly inform the other Controller about the receipt of any Data Subject Access Request;
- 77.4.3 provide the other Controller with reasonable assistance in complying with any Data Subject Access Request;
- 77.4.4 not disclose or release any Shared Personal Data in response to a Data Subject Access Request without first consulting the other Controller wherever possible;
- 77.4.5 assist the other Controller, at the cost of the other Controller, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 77.4.6 notify the other Controller where it receives any request to rectify, block or erase any Shared Personal Data or any other request, complaint or communication relating to either Controller's obligations under the Data Protection Legislation;
- 77.4.7 notify the other Controller if it receives any communication from the Information Commissioner or any other regulatory authority in connection with the Shared Personal Data;
- 77.4.8 Subject to DEFCON 531 (11/14), the other Controller where it receives a request from any third party for disclosure of Shared Personal Data where compliance with such request is required or purported to be required by law;
- 77.4.9 notify the other Controller without undue delay on becoming aware of any Data Loss Event or breach of the Data Protection Legislation;
- 77.4.10 at the written request of the Data Discloser, delete or return the Shared Personal Data and any copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the Personal Data;
- 77.4.11 maintain complete and accurate records and information to demonstrate its compliance with this clause 77; and
- 77.4.12 provide the other Controller with contact details of at least one employee as point of contact and responsible person for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a Data Loss Event, and the regular review of the Parties' compliance with the Data Protection Legislation,

and for the avoidance of doubt such obligation to notify under Clause 77.3 above shall include the provision of further information arising from a requirement of this Clause 77 and assistance to the other Controller in phases, as details become available.

- 77.5 The Contractor shall, in relation to any Personal Data which it intends shall be processed by Atkins Limited and/or BMT Defence and Security UK Limited who in turn will be subject to an equivalent joint controller relationship with the Contractor in connection with the Contractor's obligations under this Agreement:

- 77.5.1 Ensure that it has provided to the Authority:
- (A) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (B) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (C) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (D) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 77.5.2 ensure that:

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- (A) neither Atkins Limited nor BMT Defence and Security UK Limited process Personal Data except in accordance with this Agreement;
- (B) each of Atkins Limited and BMT Defence and Security UK Limited is subject to terms and conditions no less stringent than those set out in 1.2 and 1.3 above;
- (C) it takes all reasonable steps to ensure the reliability and integrity of Atkins Limited and/or BMT Defence and Security UK Limited and ensure that they:
 - (1) are aware of and comply with the Contractor's duties under this Clause 77;
 - (2) are subject to appropriate confidentiality undertakings with the Contractor;
 - (3) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement;
 - (4) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (5) do not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - 1. each Controller has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46, LED Article 37 or the EEA) as determined by the Authority;
 - 2. the Data Subject has enforceable rights and effective legal remedies;
 - 3. each Controller complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the other Controller in meeting its obligations); and
 - 4. each Controller complies with any reasonable instructions notified to it in advance by the other Controller with respect to the processing of the Personal Data;

77.5.3 at the written direction of a Controller, the other Controller shall delete or return the relevant Personal Data expressly including any Shared Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the other Controller is required by Applicable Laws to retain the Shared Personal Data.

77.6 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.

77.7 The Contractor has voluntarily designated a Data Protection Officer. For the purposes of 77.3.12 above, the name and contact details of the Contractor's Data Protection Officer are: Richard Talbot, QinetiQ Group Data Protection Officer, rgtalbot@qinetiq.com.

- 77.8 Before allowing any third party to process any Personal Data related to this Agreement, the Contractor must:
- 77.8.1 notify the Authority in writing of the intended processor and processing;
 - 77.8.2 obtain the written consent of the Authority;
 - 77.8.3 enter into a written agreement with the processor which give effect to the terms set out in this Clause 77 such that they apply to the processor; and
 - 77.8.4 provide the Authority with such information regarding the processor as the Authority may reasonably require,

provided always that the Authority acknowledges that it has given consent in respect of BMT Defence and Security UK Limited and Atkins Limited as equivalent joint controllers subject to compliance with the terms of this Clause 77.

- 77.9 The Contractor shall remain fully liable for all acts or omissions of any processor which it may appoint and such liability shall not be subject to the limits set out in Clause 86 (Liability) of this Agreement.
- 77.10 The Authority may, at any time on not less than 30 Business Days' notice, require the Contractor to replace any contractual provisions with its processors reflecting the obligations set out in this Clause 77 with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 77.11 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Business Days' notice to the Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 77.12 The liability of the Contractor under this Clause 77 shall not be subject to the limits of liability set out in clause 86 of this Agreement.

78. CONFIDENTIALITY

- 78.1 Subject to Schedule H (Contractor's Commercially Confidential Information) the Parties agree that provisions of this Agreement including any relevant Approved Tasking Orders shall, subject to Clause 78.2, not be treated as Commercially Confidential Information and may be disclosed without restriction.
- 78.2 Clause 78.1 shall not apply to any of those provisions of this Agreement which is designated as Commercially Sensitive Information. Any such provision of information shall, subject to Clause 81.1 (Disclosure), be kept confidential for the periods specified in Schedule H (*Contractor's Commercially Sensitive Information*) or otherwise agreed by the Parties.
- 78.3 Notwithstanding the provisions of Clause 78.1, each Party shall:
- 78.3.1 treat all information it receives from the other Party under this Agreement or in connection with the provision of the Services as Commercially Confidential Information;
 - 78.3.2 only disclose such information to those of the Contractor Related Parties or Authority Related Parties having a need to know for the purposes of this Agreement and the Services;
 - 78.3.3 not copy any information otherwise than for the purposes of this Agreement; and

- 78.3.4 not disclose any such information to Third Parties except as permitted under, and subject to the provisions of, Clause 27 (Conflicts of Interest) and Clause 81 (Disclosure).
- 78.4 The Contractor shall ensure that all Engaged Personnel are aware of the obligations set out in Clause 78.3 prior to receiving any information.
- 78.5 Upon expiry or termination of this Agreement for any reason, save to the extent permitted to be retained under this Agreement or required to be retained by Applicable Laws, the Contractor shall (and shall procure that each Contractor Related Party shall) destroy or return to the Authority all Authority Commercially Sensitive Information of the Authority or any Authority Related Party in its possession or control.
- 78.6 The provisions of this Clause 78 (Confidentiality) and Clause 81 (Disclosure) shall supersede and replace any other confidentiality undertakings agreed in writing between the Parties with respect of the subject matter of this Agreement prior to the date of this Agreement.
- 79. NOT USED**
80. NOT USED
- 81. DISCLOSURE**
- 81.1 The obligations set out under Clauses 78.2 and 78.3 not to release information to Third Parties shall not apply to:
- 81.1.1 any disclosure by the Authority of information comprising Authority IPR;
- 81.1.2 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Agreement to the extent required for the performance of those obligations;
- 81.1.3 any disclosure of information which a Party can demonstrate is already in, or comes into, the public domain otherwise than as a result of a breach of Clause 78 (*Confidentiality*);
- 81.1.4 any disclosure to enable a determination to be made under Clause 64 (*Dispute Resolution Procedure*);
- 81.1.5 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority (whether having the force of law or if not having the force of law) compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 81.1.6 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 81.1.7 any disclosure of information to the Parties' own professional advisers, insurance advisers or lenders;
- 81.1.8 any disclosure by the Authority of information as may be reasonably required:

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- (A) for the purpose of conducting a due diligence exercise, to any proposed contractor, its advisers and lenders, should the Authority decide to retender all or part of the Agreement or a replacement or continuation thereof or any part thereof;
- (B) in the course of carrying out its public functions;
- (C) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; or
- (D) for any other purpose in the exercise of the Authority's rights of disclosure and use set out under Clauses 69 (*Ownership of Intellectual Property*) to 76 (*Use and Sharing of Know How*);

81.1.9 any disclosure of information by the Authority to any Government Body or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Agreement;

81.1.10 any disclosure of information for the purpose of:

- (A) the examination and certification of the Authority's or the Contractor's accounts;
- (B) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (C) (without prejudice to the generality of Clause 81.1.5) compliance with the FOIA or the Environmental Information Regulations,

provided that neither Clause 81.1.5 nor Clause 81.1.10(C) shall permit disclosure of Commercially Confidential Information that would not be disclosed in accordance with Clause 78.3 where that information is exempt from disclosure under section 41 of the FOIA or regulation 12 of the Environmental Information Regulations;

any disclosure of information by the Contractor to a Contractor Related Party where the Contractor Related Party has a need to know such information for the purpose of the relevant sub-contract (but provided the Contractor Related Party is under obligations of confidentiality no less onerous than those in this Agreement); or

any disclosure of information that was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Contractor or otherwise prohibited from disclosing the information to the Authority.

- 81.2 Where disclosure is permitted under the provisions of this Clause 81 (*Disclosure*) the Party disclosing the information shall procure that the recipient of the information shall be subject to obligations of confidentiality no less onerous than those contained in this Agreement. This obligation shall not however apply to disclosures of information made under the provisions of Clauses 81.1.3, 81.1.5, 81.1.6, 81.1.8(D), 81.1.10(B) or 81.1.10(C).
- 81.3 The Contractor shall not (and shall procure that the Contractor Related Parties shall not) make use of the Agreement or any Commercially Confidential Information issued or provided by or on behalf of the Authority in connection with the Agreement otherwise than for the purpose of the Agreement and the Services, except with the written consent of the Authority (or information that could be disclosed by the Contractor to Third Parties under the provisions of Clauses 81.1.3 or 81.1.6).
- 81.4 Where the Contractor, in carrying out its obligations under the Agreement, is provided with information by or on behalf of the Authority relating to any person, the Contractor shall not disclose or make use of any such information, otherwise than for the purpose for which it was provided, unless the Contractor has obtained the prior written consent of the Authority.
- 81.5 Where the Contractor, in carrying out its obligations under the Agreement, is provided with information by or on behalf of a Third Party relating to any person, the Contractor shall not disclose or make use of any such information, otherwise than for the purpose for which it was provided, unless the Contractor has obtained the prior written consent of the Third Party.
- 81.6 The Contractor shall not, and shall ensure that the Contractor Related Parties do not:
- 81.6.1 disclose or permit disclosure of any details of this Agreement to the news media or any Third Party or make any press announcements or publicise this Agreement or its contents in any way; or
- 81.6.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;
- without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed).
- 81.7 The provisions of this Clause 81 (*Disclosure*), Clause 82 (*Contractor Right to Request Confidentiality*) and Clause 83 (*Publication*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989, Clause 27 (*Conflicts of Interest*), Part XI (*Security*) and Clause 77 (*Data Protection*).

82. CONTRACTOR RIGHT TO REQUEST CONFIDENTIALITY

The Contractor may at any time request in writing, stating reasons, that the Authority keeps particular information confidential and does not disclose it to Third Parties. The Contractor may further request in writing at any time that, where the Authority discloses information pursuant to Clause 84 (*Freedom of Information Act*), the Authority make representations to the recipient of such information as to the desirability of keeping such information confidential. Any such request by the Contractor shall be accompanied by a document setting out in writing the requested representations. The Authority shall act reasonably when considering whether to make such representations.

83. PUBLICATION

- 83.1 Subject to Clause 78.2 and Clause 83.2, the Contractor gives its consent to the Authority to publish to the general public (including on a website) the content of the Agreement (including any amendments agreed from time to time). The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Agreement.
- 83.2 Where an amendment to the Agreement occurs, the Authority shall consult with the Contractor over whether any of those changes should be treated as Commercially Sensitive Information and so be redacted for public availability.
- 83.3 The Contractor acknowledges and accepts that its representations on redactions during consultation under Clause 83.2 may not be determinative and that the decision as to whether to redact information is a matter in which the Authority shall exercise its own discretion, using as its guiding principles the exemptions from disclosure available under the provisions of the FOIA and the Environmental Information Regulations.

84. FREEDOM OF INFORMATION ACT

- 84.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its information disclosure requirements pursuant to the same in the manner provided for in this Clause 84 (*Freedom of Information Act*).
- 84.2 Where the Authority receives a Request for Information (as defined in the FOIA) in relation to information that the Contractor is holding on its behalf and which the Authority does not hold itself, the Authority shall refer to the Contractor such Request for Information as soon as reasonably practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:
- 84.2.1 provide the Authority with a copy of all such information in the form that the Authority requires as soon as reasonably practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
- 84.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations (as applicable).
- 84.3 Following notification under Clause 84.2, and up until such time as the Contractor has provided the Authority with all the information specified in Clause 84.2.1, the Contractor may make representations to the Authority as to whether or not or on what basis information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:
- 84.3.1 whether information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 84.3.2 whether information is to be disclosed in response to a Request for Information and in no event shall the Contractor respond directly, or allow any Contractor Related Party to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.

- 84.4 The Contractor acknowledges that (notwithstanding the provisions of Clauses 78 (*Confidentiality*) to Clause 83 (*Publication*) and this Clause 84 (*Freedom of Information Act*)) the Authority shall act in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "**Code**").
- 84.5 When acting in accordance with the Code, the Authority may be obliged in certain circumstances under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or DE&S:
- 84.5.1 without consulting the Contractor; or
- 84.5.2 following consultation with the Contractor (having taken its views into account).

PART XIII – INSURANCE AND LIABILITIES

85. INSURANCE

- 85.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Agreement, the Contractor shall for the periods specified in Schedule L (Insurances) take out and maintain or procure the taking out and maintenance of the insurances required for the Approved Tasking Orders as set out under this Clause 85 and Schedule L (Insurances) and any other insurances as may be required by Applicable Laws, together the "**Insurances**". The Contractor shall ensure that each of these Insurances is effective in each case not later than the date on which the relevant risk under the Approved Tasking Order commences.
- 85.2 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 85.3 Where specified in Schedule L (Insurances) the Contractor shall ensure that the relevant policy of insurance:
- 85.3.1 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 Agreement; and
- 85.3.2 names the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions.
- 85.4 The Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any Insurance(s), including in circumstances where the Contractor is required to name the Authority on any such insurance policies to protect the Authority's separate interests.
- 85.5 The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 85.6 The Authority may elect (but shall not be obliged) where notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 85.7 The Contractor shall from the date of this Agreement and within fifteen (15) Business Days after the renewal of each of the Insurances taken out by the Contractor, provide evidence, in a form satisfactory to the Authority, that the Insurances are in full force and effect and meet in

full the requirements of this Clause 85 and Schedule L (Insurances). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of its liabilities and obligations under this Agreement.

- 85.8 The Contractor shall notify the Authority in writing at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances taken out by the Contractor. This Clause 85.8 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Clause 85.
- 85.9 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to this Agreement, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 85.10 Except where the Authority is the claimant party, the Contractor shall give the Authority notice within twenty (20) Business Days after any insurance claim relating to this Agreement, but for the application of the applicable policy excess, and (as required by the Authority) full details of the incident giving rise to the claim.
- 85.11 The Contractor shall be liable for any and all premia payable under the Insurances save where the insurance premium payable for insuring any risk has been increased as a result of any act or omission of the Authority or any Authority Related Party in which event the Authority shall be liable for the increase to the extent that such increased cost is an Allowable Cost.
- 85.12 Where any insurance referred to in this Clause 85 and Schedule L (Insurances) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall, subject to the following, be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise unless (i) the Authority or any Authority Related Party causes or contributes to the event giving rise to the claim under the Insurances, and (ii) in those circumstances, the excess or deductible is assessed to be an Allowable Cost.
- 85.13 All insurance proceeds received in respect of the Property Damage "All Risks" Insurance as specified in Schedule L (Insurances) shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.

86. LIABILITY

86.1 Acknowledgements

Nothing in this Agreement or pursuant to any Approved Tasking Order shall be construed to limit or exclude either Party's liability for:

- 86.1.1 death or personal injury caused by its negligence or that of its Staff;
 - 86.1.2 fraud or fraudulent misrepresentation by it or its Staff;
 - 86.1.3 a breach of any obligations implied by common law or statute law (including but not limited to those set out in Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982) which are not permitted to be excluded by Law;
 - 86.1.4 any claim under Clause 74 (*Contractor's IPR Indemnity*);
 - 86.1.5 any other matter which, by Law, may not be limited or excluded.
- 86.2 Nothing in this Agreement shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of this Agreement and any Approved Tasking Order or by negligence on the part of the Authority, or the Authority's employees, servants or agents.

Limitation of Liability

- 86.2A Subject to Clauses 86.1 and 86.12, the liability of the Contractor to the Authority for any Losses arising out of or in relation to Services provided under, or in the performance or non-performance of, this Agreement or an Approved Tasking Order, howsoever arising, shall be limited as follows:
- 86.2A.1 in [REDACTED]
 - 86.2A.2 in [REDACTED]:
 - (i) [REDACTED] and
 - (ii) in [REDACTED].
 - 86.2A.3 [REDACTED].

Personal Injury & Loss of Property

- 86.3 [REDACTED]
- 86.4 [REDACTED]:
- 86.4.1 [REDACTED]:
 - (A) [REDACTED]

- (B) for any such costs or expenses reasonably incurred by the Authority in connection with any loss of property;

86.4.2 [REDACTED];

86.4.3 [REDACTED]; and

86.4.4 [REDACTED]

86.5 The Authority shall immediately notify the Contractor of any claim, action or proceedings made or brought in respect of any personal injury or loss of property to which this Clause applies.

86.6 The Contractor shall, (subject to Clause 86.7 and 86.8) be responsible for dealing with or settling that claim, action or proceeding.

86.7 The Authority shall in any event deal with any such claim, action or proceeding which is made by or against a Servant of the Crown, and Clause 86 shall not apply to any such claim, action or proceeding.

86.8 [REDACTED].

86.9 The Contractor shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

86.10 Calculating Liability

In calculating the relevant amounts under this Clause 86 there shall be no double accounting of liabilities or Losses.

86.11 **Not used**

86.12 Limit on Claims Brought

[REDACTED]

86.13 Consequential and Indirect Loss

[REDACTED]

86.14 Proportionate liability

If the Contractor is liable to the Authority, or any others for whom Services are provided, under this Agreement or otherwise in connection with the Services, for loss or damage to which any [REDACTED] For the avoidance of doubt nothing in this Clause shall affect the joint and several liability of the entities comprising the Contractor.

86.15 Sole Recourse

86.15.1 [REDACTED]

86.15.2 Nothing in Clause 86.15.1 shall affect:

(A) any rights of the Authority under:

(1) any Compliance Agreement; or

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- (2) any other agreement (whether or not entered into pursuant to this Agreement); or
- (B) the operation of express rights granted by this Agreement to third parties pursuant to the Contracts (Rights of Third Parties) Act 1999.

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IN WITNESS whereof this Agreement has been entered into the day and year first hereinbefore mentioned.

SIGNED)
for and on behalf of)

THE SECRETARY OF STATE FOR DEFENCE)

Name of signatory:

Title of signatory:

In the presence of:

Signature of witness:

Name of witness:

Address of witness:

SIGNED by the CONTRACTOR

for and on behalf of)

Name of signatory:

Title of signatory:

for and on behalf of)

Name of signatory:

Title of signatory:

for and on behalf of))

Name of signatory:

Title of signatory: