



CONTRACT NO: TRP/712620450 Issue 1.0

FOR:

TACSYS RESOURCE PARTNER (TRP)

<p>Between the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland</p> <p>Team Name and address: Tactical Systems (TacSys) Delivery Team Defence Digital Ash 0A 3008# Abbey Wood, Filton, Bristol BS34 8JH E-mail Address: ukstratcomdd-ies-ts-trp-gm@mod.gov.uk</p>	<p>And</p> <p>Contractor Name and address: QinetiQ Limited Cody Technology Park, Ivley Road, Farnborough Hampshire GU14 0LX E-mail Address: [REDACTED]</p>
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OFFICIAL-SENSITIVE COMMERCIAL

Contract at Execution 14 August 2024

Schedule of Requirements for Contract No: TRP/712620450

Item Details	Price (£) Ex VAT		
	Year 1 2024/25	Year 2 2025/26	Year 3 2026/27
Core Contractor Deliverables iaw SOR and SOR Appendices 1 to 12 inclusive	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 13 Option (TRP Work Package – MORPHEUS Project)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 14 Option (TRP Work Package - BMA and Transition Partner)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 15 Option (TRP Work Package – MORPHEUS Platform Integration)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 16 Option (TRP Work Package – Test and Acceptance)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 17 Option (TRP Work Package – Training)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 18 Option (TRP Work Package – MORPHEUS Test and Reference Centre (MTRC))	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 19 Option (TRP Work Package – Joint Systems Integration)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 20 Option (TRP Work Package – OFI and MKMS)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 21 Option (TRP Work Package – OFI and MUDTRaITS)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 22 Option (TRP Work Package – SERAPH)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 23 Option (TRP Work Package – Bearers)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 24 Option (TRP Work Package – MMR)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 25 Option (TRP Work Package – Dismounted Situational Awareness (DSA))	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 26 Option (TRP Work Package – AFV-Headset)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 27 Option (TRP Work Package – Trinity)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 28 Option (TRP Work Package – Falcon)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 29 Option (TRP Work Package – NIOBE)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 30 Option (TRP Work Package – DC3I)	[REDACTED]	[REDACTED]	[REDACTED]

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Contract at Execution 14 August 2024

Item Details	Price (£) Ex VAT		
SOR Appendix 31 Option (TRP Work Package – BCIP Sustain)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 32 Option (TRP Work Package – Post Design Services)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 33 Option (TRP Work Package – CWE & JPO Facility)	[REDACTED]	[REDACTED]	[REDACTED]
SOR Appendix 34 Option (TRP Work Package – Future Operating Model)	[REDACTED]	[REDACTED]	[REDACTED]

*as detailed in DEFFORM 96

****and Delivery if specified in Schedule 3 (Contract Data Sheet)**

Firm Price Offer Inc. Packaging and Delivery **

[REDACTED]

Year 1 - Statement of Work

Item Details	Price (£) Ex VAT	Exercised Date
Core Contractor Deliverables iaw SOR and SOR Appendices 1 to 12 inclusive	[REDACTED]	[REDACTED]
SOR Appendix 13 Option (TRP Work Package – MORPHEUS Project)	[REDACTED]	[REDACTED]
SOR Appendix 19 Option (TRP Work Package – Joint Systems Integration)	[REDACTED]	[REDACTED]
SOR Appendix 24 Option (TRP Work Package – MMR)	[REDACTED]	[REDACTED]
SOR Appendix 26 Option (TRP Work Package – AFV-Headset)	[REDACTED]	[REDACTED]
SOR Appendix 27 Option (TRP Work Package – Trinity)	[REDACTED]	[REDACTED]
SOR Appendix 28 Option (TRP Work Package – Falcon)	[REDACTED]	[REDACTED]
SOR Appendix 31 Option (TRP Work Package – BCIP Sustain)	[REDACTED]	[REDACTED]
SOR Appendix 32 Option (TRP Work Package – Post Design Services)	[REDACTED]	[REDACTED]

Year 2 - Statement of Work

Contract at Execution 14 August 2024

Item Details	Price (£) Ex VAT	Exercised Date
Core Contractor Deliverables iaw SOR and SOR Appendices 1 to 12 inclusive	[REDACTED]	[REDACTED]

Year 3 - Statement of Work

Item Details	Price (£) Ex VAT	Exercised Date
Core Contractor Deliverables iaw SOR and SOR Appendices 1 to 12 inclusive	[REDACTED]	[REDACTED]

Contract Value at Contract Offer
Inc. Packaging and Delivery **

[REDACTED]

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Standardised Contracting Terms

General Conditions

1. General

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
- c. The Contractor warrants and represents, that:
 - (1) they have the full capacity and authority to enter into, and to exercise their rights and perform their obligations under, the Contract;
 - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against themselves or a Subcontractor which would adversely affect the Contractor's ability to perform their obligations under the Contract;
 - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for the winding-up of the company 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;
 - (4) for so long as the Contract remains in force they shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for the winding-up of the company or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.
- d. Unless the context otherwise requires:
 - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
 - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
 - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
 - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
 - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
 - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or its nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
 - (7) Unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

2. Duration of Contract

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) unless it is

otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

3. Entire Agreement

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

4. Governing Law

- a. Subject to clause 4.d, the Contract shall be considered as a contract made in England and subject to English Law.
- b. Subject to clause 4.d and Condition 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- c. Subject to clause 4.d any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
- d. If the Parties pursuant to the Contract agree that Scots Law should apply then the following amendments shall apply to the Contract:
 - (1) Clause 4.a, 4.b and 4.c shall be amended to read:
 - "a. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
 - b. Subject to Condition 40 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
 - c. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction."
 - (2) Clause 40.b shall be amended to read:

"In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the avoidance of doubt, for the purpose of arbitration the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010."
- e. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- f. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain

- fully enforceable as between the Parties notwithstanding such a termination.
- g. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in Schedule 3 (Contract Data Sheet) as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to the Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

5. Precedence

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
- (1) Conditions 1 - 44 (and 45 - **Error! Reference source not found.**, if included in the Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
 - (2) the Schedule of Requirements and Schedule 8 (Assurance and Acceptance Procedure);
 - (3) the remaining Schedules; and
 - (4) any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency within or between the documents referred to in clause 5.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause 5.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with Condition 40 (Dispute Resolution).

6. Formal Amendments to the Contract

- a. Except as provided in Condition 31 and subject to clause 6.c, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:
- (1) the Authority Notice of Change under Schedule 4 (Contract Change Control Procedure) (where used) and;
 - (2) the Contractor's unqualified acceptance of the contractual amendments as evidenced by the DEFFORM 10B duly signed by the Contractor.
- b. Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.
- c. Where the Authority wishes to amend the Contract to incorporate additional work, the provisions of Schedule 11 (Pricing and Payment) shall apply in relation to the pricing of such additional work.
- Changes to the Specification
- d. The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification.
- e. The Contractor shall use a configuration control system to control all changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

7. Authority Representatives

- a. Any reference to the Authority in respect of:
 - (1) the giving of consent;
 - (2) the delivering of any Notices; or
 - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,
 shall be deemed to be references to the Authority's Representatives in accordance with this Condition 7.
- b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.
- c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with Condition 6 (Formal Amendments to the Contract).

8. Severability

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

9. Waiver

- a. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- b. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

10. Assignment of Contract

Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

11. Third Party Rights

Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

12. Transparency

- a. Notwithstanding any other term of this Contract, including Condition 13 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information and Publishable Performance Information to the general public.
- b. Subject to clause 12.c the Authority shall publish and maintain an up-to-date version of

the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.

- c. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the Authority shall be entitled to exclude such Information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.
- d. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in clause 12.e to 12.i. Where the Authority publishes Transparency Information, it shall:
 - (1) before publishing, redact any Information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), for the avoidance of doubt, including Sensitive information;
 - (2) taking account the Sensitive Information set out in Schedule 5, consult with the Contractor where the Authority intends to publish Information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
 - (3) present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Contract is being performed.

Publishable Performance Information

- e. Within three (3) months of the Effective Date of Contract the Contractor shall provide to the Authority for its approval (such approval shall not be unreasonably withheld or delayed) a draft Publishable Performance Information KPI Data Report consistent with the content requirements of Schedule 9.
- f. If the Authority rejects any draft Publishable Performance Information the Contractor shall submit a revised version of the relevant KPI Data Report for further approval by the Authority with five (5) Business Days of receipt of any notice or rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the parties have an agreed version of the Publishable Performance Information.
- g. The Contractor shall provide an accurate and up-to-date version of the KPI Data Report to the Authority for each quarter at the frequency referred to in the agreed Schedule 9.
- h. Any dispute in connection with the preparation and/or approval of Publishable Performance Information, other than under clause 12.f, shall be resolved in accordance with the dispute resolution procedure provided for in this Contract.
- i. The requirements of this Condition are in addition to any other reporting requirements in this Contract.

13. Disclosure of Information

- a. Subject to clauses 13.d to 13.i and Condition 12 each Party:

- (1) shall treat in confidence all Information it receives from the other;
 - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b.** The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
- (5) is disclosed to their employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
 - (6) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.
- c.** The Contractor shall ensure that their employees are aware of the Contractor's arrangements for discharging the obligations at clauses 13.a and 13.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d.** A Party shall not be in breach of clauses 13.a, 13.b, 13.f, 13.g and 13.h to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
 - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
 - (3) can show:
 - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
 - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
 - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
 - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;
- provided that the relationship to any other Information is not revealed.
- e.** Neither Party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Condition.
- f.** The Authority may disclose the Information:
- (1) to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the

- recipient is made aware of its confidentiality;
- (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (4) subject to clause 13.g below, on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with the Contract;
- (5) subject to clause 13.g below, on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

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

- g. Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with clauses 13.f(4) or 13.f(5) above, the Authority will endeavour to provide the Contractor with 3 Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under clause 13.f(3) above, if reasonably requested by the Contractor within 2 Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Condition.
- h. Before sharing any Information in accordance with clause 13.f, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- i. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that their representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- j. Nothing in this Condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

14. Publicity and Communications with the Media

The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

15. Change of Control of Contractor

- a. The Contractor shall notify the Representative of the Authority at the address given in clause 15.b, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Subcontractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal

- sanction arising from issuing such a notice.
- b. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:
Mergers & Acquisitions Section
Strategic Supplier Management Team
Spruce 3b # 1301
MOD Abbey Wood,
Bristol, BS34 8JH
and emailed to: DefComrclSSM-MergersandAcq@mod.gov.uk
- c. The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to contract award.
- d. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 15.a. The Authority shall act reasonably in exercising its right of termination under this Condition.
- e. If the Authority exercises its right to terminate in accordance with clause 15.d the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 15.e must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.
- f. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Condition.

16. Environmental Requirements

The Contractor shall in all their operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of their supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

17. Contractor's Records

- a. The Contractor and their Subcontractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.
- b. The Contractor and their Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
- (1) to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
 - (2) to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

- c. With regard to the records made available to the Authority under clause 17.a of this Condition, and subject to the provisions of Condition 13 (Disclosure of Information), the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- d. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:
 - (1) the end of the Contract term;
 - (2) the termination of the Contract; or
 - (3) the final payment,whichever occurs latest.

18. Notices

- a. A Notice served under the Contract shall be:
 - (1) in writing in the English language;
 - (2) authenticated by signature or such other method as may be agreed between the Parties;
 - (3) sent for the attention of the other Party's Representative, and to the address set out in Schedule 3 (Contract Data Sheet);
 - (4) marked with the number of the Contract; and
 - (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.
- b. Notices shall be deemed to have been received:
 - (1) if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
 - (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
 - (3) if sent by facsimile or electronic means:
 - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

19. Progress Monitoring, Meetings and Reports

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that their Contractor's representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:
 - (1) performance/Delivery of the Contractor Deliverables;
 - (2) risks and opportunities;
 - (3) any other information specified in Schedule 3 (Contract Data Sheet); and
 - (4) any other information reasonably requested by the Authority.

Supply of Contractor Deliverables

20. Supply of Contractor Deliverables and Quality Assurance

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:

- (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables; and
- (2) discharge their obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of clause 20.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
 - (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
 - (2) notify the Authority as soon as they become aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
 - (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

21. Marking of Contractor Deliverables

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Schedule 3 (Contract Data Sheet), if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in the Schedule of Requirements.
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with Condition 22 (Packaging and Labelling (excluding Contractor Deliverables containing Munitions)).

22. Packaging and Labelling (excluding Contractor Deliverables containing Munitions)

- a. Packaging responsibilities are as follows:
 - (1) The Contractor shall be responsible for providing Packaging which fully complies with the requirements of the Contract.
 - (2) The Authority shall indicate in the Contract the standard or level of Packaging required for each Contractor Deliverable, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in the Contract, the Contractor shall request such instructions from the Authority before proceeding further.
 - (3) The Contractor shall ensure all relevant information necessary for the effective performance of the Contract is made available to all Subcontractors.
 - (4) Where the Contractor or any of their Subcontractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Contractor Deliverables they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
- b. The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition, the following requirements apply:
 - (1) The Contractor shall provide Packaging which:
 - (a) will ensure that each Contractor Deliverable may be transported and

- delivered to the consignee named in the Contract in an undamaged and serviceable condition; and
- (b) is labelled to enable the contents to be identified without need to breach the package; and
- (c) is compliant with statutory requirements and this Condition.
- (2) The Packaging used by the Contractor to supply identical or similar Contractor Deliverables to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:
 - (a) reference in the Contract to a PPQ means the quantity of a Contractor Deliverable to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
 - (b) Robust Contractor Deliverables, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with clauses 22.i to 22.l. References to "PPQ packages" in subsequent text shall be taken to include Robust Contractor Deliverables; and
 - (c) for ease of handling, transportation and delivery, packages which contain identical Contractor Deliverables may be bulked and overpacked, in accordance with clauses 22.i to 22.k.
- c. The Contractor shall ascertain whether the Contractor Deliverables being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:
 - (1) The Health and Safety At Work Act 1974 (as amended);
 - (2) The Classification Hazard Information and Packaging for Supply Regulations (CHIP4) 2009 (as amended);
 - (3) The REACH Regulations 2007 (as amended); and
 - (4) The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- d. The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
 - (1) The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
 - (2) The Air Navigation (Amendment) Order 2019.
- e. As soon as possible, and in any event no later than one month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended) and in accordance with Condition 23 (Supply of Hazardous Materials or Substances in Contractor Deliverables).
- f. The Contractor shall comply with the requirements for the design of MLP which include clauses 22.f and 22.g as follows:
 - (1) Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that their quality systems and military package design expertise are of an equivalent standard.
 - (a) The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:
 DES LSOC SpSvcS--SptEng-Pkg1
 MOD Abbey Wood
 Bristol, BS34 8JH
 Tel. +44(0)30679-35353
DESLSOC-SpSvcS-SptEng-Pkg1@mod.gov.uk
 - (b) The MPAS Documentation is also available on the DStan website.
 - (2) MLP shall be designed to comply with the relevant requirements of Def Stan 81-

041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a SPIS, in accordance with Def Stan 81-041 (Part 4).

- (3) The Contractor shall ensure a search of the SPIS index (the 'SPIN') is carried out to establish the SPIS status of each requirement (using DEFFORM 129a 'Application for Packaging Designs or their Status').
 - (4) New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
 - (5) Where there is a usable SFS, it shall be used in place of a SPIS design unless otherwise stated by the Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
 - (6) All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.
 - (7) Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with clause 22.f(1) above, or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.
 - (8) The documents supplied under clause 22.f(6) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 and DEFCON 21.
- g.** Unless otherwise stated in the Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:
- (1) If the Contractor or their Subcontractor is the PDA they shall:
 - (a) On receipt of instructions received from the Authority's representative nominated in Box 2 Annex A to Schedule 3 (Contract Data Sheet), prepare the required package design in accordance with clause 22.f.
 - (b) Where the Contractor or their Subcontractor is registered, they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - i. a list of all SPIS which have been prepared or revised against the Contract; and
 - ii. a copy of all new / revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
 - (c) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow clause 22.g(1)(b)1.a(4)(b).
 - (2) Where the Contractor or their Subcontractor is not the PDA and is un-registered, they shall not produce, modify, or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
 - (3) Where the Contractor or their Subcontractor is un-registered and has been given authority to produce, modify, and update SPIS designs by the Contract, they shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow clause 22.g(1)(b).
 - (4) Where the Contractor or their Subcontractor is not a PDA but is registered, they shall follow clauses 22.g(1)(a) and 22.g(1)(b).
- h.** If special jigs, tooling etc., are required for the production of MLP, the Contractor shall obtain written approval from the Commercial Officer before providing them. Any approval given will be subject to the terms of DEFCON 23 (SC2) or equivalent condition, as appropriate.
- i.** In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:
- (1) If the Contract specifies UK or NATO MPL, labelling and marking of the

packages shall be in accordance with Def Stan 81-041 (Part 6) and this Condition as follows:

- (a) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.
- (b) Each consignment package shall be marked with details as follows:
 - i. name and address of consignor;
 - ii. name and address of consignee (as stated in the Contract or order);
 - iii. destination where it differs from the consignee's address, normally either:
 - (i) delivery destination / address; or
 - (ii) transit destination, where delivery address is a point for aggregation / disaggregation and / or onward shipment elsewhere, e.g. railway station, where that mode of transport is used;
 - iv. the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
 - (i) If aggregated packages are used, their consignment marking and identification requirements are stated at clause 22.I.
- (2) If the Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Contractor Deliverables as shown in the Contract schedule, to state the following:
 - (a) description of the Contractor Deliverable;
 - (b) the full thirteen digit NATO Stock Number (NSN);
 - (c) the PPQ;
 - (d) maker's part / catalogue, serial and / or batch number, as appropriate;
 - (e) the Contract and order number when applicable;
 - (f) the words "Trade Package" in bold lettering, marked in BLUE in respect of trade packages, and BLACK in respect of export trade packages;
 - (g) shelf life of item where applicable;
 - (h) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
 - (i) any statutory hazard markings and any handling markings, including the mass of any package which exceeds 3kg gross; and
 - (j) any additional markings specified in the Contract.
- j. Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
 - (1) the full 13-digit NSN;
 - (2) denomination of quantity (D of Q);
 - (3) actual quantity (quantity in package);
 - (4) manufacturer's serial number and / or batch number, if one has been allocated; and
 - (5) the CP&F-generated unique order identifier.
- k. Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of Annex A to Schedule 3 (Contract Data Sheet).
- l. The requirements for the consignment of aggregated packages are as follows:
 - (1) With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in the Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the

package contains Contractor Deliverables of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.

- (2) Two adjacent sides of the outer container shall be clearly marked to show the following:
 - (a) class group number;
 - (b) name and address of consignor;
 - (c) name and address of consignee (as stated on the Contract or order);
 - (d) destination if it differs from the consignee's address, normally either:
 - i. delivery destination / address; or
 - ii. transit destination, if the delivery address is a point of aggregation / disaggregation and / or onward shipment e.g. railway station, where that mode of transport is used;
 - (e) where applicable, the reference number of the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case / container. If the Contractor Deliverables listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
 - (f) the CP&F-generated shipping label; and
 - (g) any statutory hazard markings and any handling markings.
- m. Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under the Contract, shall be considered as an alteration to the specification in accordance with Condition 6 (Formal Amendments to the Contract).
- n. The Contractor shall ensure that timber and wood-containing products supplied under the Contract comply with the provisions of Condition 25 (Timber and Wood-Derived Products) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).
- o. All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- p. In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Condition 17 (Contractor's Records).
- q. This Condition is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- r. Liability for other losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in the Contract.
- s. General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (STANAGs), and further information are available from the DStan internet site at: <https://www.dstan.mod.uk/>
- t. Unless specifically stated otherwise in the invitation to tender or the Contract, reference to any standard including Def Stans or STANAGs in any invitation to tender or Contract document means the edition and all amendments extant at the date of such tender or Contract.
- u. In the event of conflict between the Contract and Def Stan 81-041, the Contract shall

take precedence.

23. Plastic Packaging Tax

- a. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
- b. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
- c. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.
- d. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
- e. In accordance with Condition 17 the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
- f. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
 - (1) confirmation of the tax status of any Plastic Packaging Component;
 - (2) documents to confirm that PPT has been properly accounted for;
 - (3) product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
 - (4) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
- g. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 13.f above is accurate.
- h. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
- i. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

24. Supply of Data for Hazardous Materials or Substances in Contractor Deliverables

- a. The Contractor shall provide to the Authority:
 - (1) for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance the extant Classification, Labelling and Packaging (GB CLP) Regulation; and
 - (2) for each Contractor Deliverable containing hazardous materials or substances, safety information as required by the Health and Safety at Work, etc Act 1974, at the time of supply.Nothing in this Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
- b. If the Contractor Deliverable contains hazardous materials or substances, or is a substance falling within the scope of the extant UK REACH Regulation:

- (1) the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in clause 24.h below; and
 - (2) the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.
- c. If the Contractor is required, under, or in connection with the Contract, to supply Contractor Deliverables or components of Contractor Deliverables that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.
 - d. The Contractor shall provide to the Authority a completed Schedule 6 (Hazardous Contractor Deliverables, Materials or Substances Supplied under the Contract: Data Requirements) in accordance with Schedule 3 (Contract Data Sheet).
 - e. If the Contractor Deliverables, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
 - f. If the Contractor Deliverables, materials or substances are or contain or embody a radioactive substance as defined in the extant Ionising Radiation Regulations, the Contractor shall additionally provide details of:
 - (1) activity; and
 - (2) the substance and form (including any isotope);
 - g. If the Contractor Deliverables, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.
 - h. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under clause 24.a(1) and 24.b(1), any information arising from the provisions of clauses 24.e, 24.f and 24.g and the completed Schedule 6, shall be sent directly to the Authority's Representative (Commercial) as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in Schedule 3 (Contract Data Sheet). In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below:
 - (1) Hard copies to be sent to:
Hazardous Stores Information System (HSIS)
Department of Safety & Environment, Quality and Technology (DS & EQT)
Spruce 2C, #1260,
MOD Abbey Wood (South)
Bristol BS34 8JH
 - (2) Emails to be sent to:
DESTECH-QSEPEnv-HSISMulti@mod.gov.uk
 - i. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Contractor Deliverables. Any withholding of information concerning Hazardous Contractor Deliverables, materials or substances shall be regarded as a material breach of Contract under Condition 43 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 43.

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

25. Timber and Wood-Derived Products

- a. All Timber and Wood-Derived Products supplied by the Contractor under the Contract:
 - (1) shall comply with the Contract Specification; and
 - (2) must originate either:
 - (a) from a Legal and Sustainable source; or
 - (b) from a FLEGT-licensed or equivalent source.
- b. In addition to the requirements of clause 25.a, all Timber and Wood-Derived Products supplied by the Contractor under the Contract shall originate from a forest source where management of the forest has full regard for:
 - (1) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
 - (2) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
 - (3) safeguarding the basic labour rights and health and safety of forest workers.
- c. If requested by the Authority, the Contractor shall provide to the Authority Evidence that the Timber and Wood-Derived Products supplied to the Authority under the Contract comply with the requirements of clause 25.a or 25.b or both.
- d. The Authority reserves the right at any time during the execution of the Contract and for a period of five (5) years from final Delivery under the Contract to require the Contractor to produce the Evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.
- e. If the Contractor has already provided the Authority with the Evidence required under clause 25.c, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the Evidence remains valid and satisfies the provisions of clauses 25.a or 25.b or both.
- f. The Contractor shall maintain records of all Timber and Wood-Derived Products delivered to and accepted by the Authority, in accordance with Condition 17 (Contractor's Records).
- g. Notwithstanding clause 25.c, if exceptional circumstances render it strictly impractical for the Contractor to record Evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:
 - (1) a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
 - (2) an explanation of the circumstances that rendered it impractical to record Evidence of proof of timber origin.
- h. The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the Evidence submitted to it demonstrates compliance with clause 25.a or 25.b, or both. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an Independent Verification and resulting report that will:
 - (1) verify the forest source of the timber or wood; and
 - (2) assess whether the source meets the relevant criteria of clause 25.b.
- i. The statistical reporting requirement at clause 25.j applies to all Timber and Wood-Derived Products delivered under the Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Condition 6 (Formal Amendments to the Contract).
- j. The Contractor shall provide to the Authority, a completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), the data or

Information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under the Contract, or in respect of each order in the case of a Framework Agreement, or at such other frequency as stated in the Contract. The Contractor shall send all completed Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements), including nil returns where appropriate, to the Authority's Representative (Commercial).

- k. The Schedule 7 (Timber and Wood-Derived Products Supplied under the Contract: Data Requirements) may be amended by the Authority from time to time, in accordance with Condition 6 (Formal Amendments to the Contract).
- l. The Contractor shall obtain any wood, other than processed wood, used in Packaging from:
 - (1) companies that have a full registered status under the Forestry Commission and Timber Packaging and Pallet Confederation's UK Wood Packaging Material Marking Programme (more detailed information can be accessed at www.forestry.gov.uk) and all such wood shall be treated for the elimination of raw wood pests and marked in accordance with that Programme; or
 - (2) sources supplying wood treated and marked so as to conform to Annex I and Annex II of the International Standard for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 published by the Food and Agricultural Organisation of the United Nations (ISPM15) (more detailed information can be accessed at www.fao.org).

26. Certificate of Conformity

- a. Where required in Schedule 3 (Contract Data Sheet) the Contractor shall provide a Certificate of Conformity (CofC) in accordance with the Schedule of Requirements and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority's Representative (Commercial) upon Delivery, and one copy shall be provided to the Consignee upon Delivery.
- b. Each CofC should include the wording "Certificate of Conformity" in the title of the document to allow for easy identification. One CofC is to be used per NSN/part number; a CofC must not cover multiple line items.
- c. The Contractor shall consider the CofC to be a record in accordance with Condition 17 (Contractor's Records).
- d. The Information provided on the CofC shall include:
 - (1) Contractor's name and address;
 - (2) Contractor unique CofC number;
 - (3) Contract number and where applicable Contract amendment number;
 - (4) details of any approved concessions;
 - (5) acquirer name and organisation;
 - (6) Delivery address;
 - (7) Contract Item Number from the Schedule of Requirements;
 - (8) description of Contractor Deliverable, including part number, specification and configuration status;
 - (9) NATO Stock Number (NSN) (where allocated);
 - (10) identification marks, batch and serial numbers in accordance with the Specification;
 - (11) quantities;
 - (12) a signed and dated statement by the Contractor that the Contractor Deliverables comply with the requirements of the Contract and approved concessions.

Exceptions or additions to the above are to be documented.
- e. Where the Schedule of Requirements and any applicable Quality Plan require demonstration of traceability and design provenance through the supply chain the Contractor shall include in any relevant subcontract the requirement for the Information called for at clause 26.d. The Contractor shall ensure that this Information is available

to the Authority through the supply chain upon request in accordance with Condition 17 (Contractor Records).

27. Access to Contractor's Premises

- a. The Contractor shall provide to the Authority's Representatives following reasonable Notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to their premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.
- b. As far as reasonably practical, the Contractor shall ensure that the provisions of clause 27.a are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Subcontractors.

28. Delivery / Collection

- a. Schedule 3 (Contract Data Sheet) shall specify whether the Contractor Deliverables are to be Delivered to the Consignee by the Contractor or Collected from the Consignor by the Authority.
- b. Where the Contractor Deliverables are to be Delivered by the Contractor (or a third party acting on behalf of the Contractor), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative as detailed in Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree administrative arrangements for Delivery and provide any Information pertinent to Delivery requested;
 - (2) comply with any special instructions for arranging Delivery in Schedule 3 (Contract Data Sheet);
 - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (4) be responsible for all costs of Delivery; and
 - (5) Deliver the Contractor Deliverables to the Consignee at the address stated in the Schedule of Requirements by the Delivery Date between the hours agreed by the Parties.
- c. Where the Contractor Deliverables are to be Collected by the Authority (or a third party acting on behalf of the Authority), the Contractor shall, unless otherwise stated in writing:
 - (1) contact the Authority's Representative (Transport) as detailed in box 10 of Annex A to Schedule 3 (Contract Data Sheet) in advance of the Delivery Date in order to agree specific arrangements for Collection and provide any Information pertinent to the Collection requested;
 - (2) comply with any special instructions for arranging Collection in Schedule 3 (Contract Data Sheet);
 - (3) ensure that each consignment of the Contractor Deliverables is accompanied by, (as specified in Schedule 3 (Contract Data Sheet)), a DEFFORM 129J in accordance with the instructions;
 - (4) ensure that the Contractor Deliverables are available for Collection by the Authority from the Consignor (as specified in Schedule 3 (Contract Data Sheet)) by the Delivery Date between the hours agreed by the Parties; and
 - (5) in the case of Overseas consignments, ensure that the Contractor Deliverables are accompanied by the necessary transit documentation. All Customs clearance shall be the responsibility of the Authority's Representative (Transport).
- d. Title and risk in the Contractor Deliverables shall only pass from the Contractor to the Authority:
 - (1) on the Delivery of the Contractor Deliverables by the Contractor to the Consignee in accordance with clause 28.b; or

- (2) on the Collection of the Contractor Deliverables from the Consignor by the Authority once they have been made available for Collection by the Contractor in accordance with clause 28.c.

29. Acceptance

- a. Acceptance of the Contractor Deliverables shall occur in accordance with any acceptance procedure specified in Schedule 8 (Assurance and Acceptance Procedure). If no acceptance procedure is so specified acceptance shall occur when either:
 - (1) the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or
 - (2) the time limit in which to reject the Contractor Deliverables defined in clause 30.b has elapsed.

30. Rejection and Counterfeit Materiel

Rejection:

- a. If any of the Contractor Deliverables delivered to the Authority do not conform to the Specification or any other terms of the Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.
- b. Rejection of any of the Contractor Deliverables under clause 30.a shall take place by the time limit for rejection specified in Schedule 3 (Contract Data Sheet), or if no such period is specified, the Contractor Deliverables shall be deemed to be accepted within a reasonable period of time.

Counterfeit Materiel:

- c. Where the Authority suspects that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall:
 - (1) notify the Contractor of its suspicion and reasons therefore;
 - (2) where reasonably possible, and if requested by the Contractor within 10 Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Contractor Deliverable or consignment and/or (ii) obtain a sample thereof for validation or testing purposes.
 - (3) give the Contractor a further 20 Business Days or such other reasonable period agreed by the Authority, from the date of the inspection at 30.c(2)(i) or the provision of a sample at 30.c(2)(ii), to comment on whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel; and
 - (4) determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Contractor Deliverable or consignment meets the definition of Counterfeit Materiel

Where the Authority has determined that the Contractor Deliverable, part or consignment of Contractor Deliverables contain Counterfeit Material then it may reject the Contractor Deliverable, part or consignment under 30.a and 30.b (Rejection).

- d. In addition to its rights under 30.a and 30.b (Rejection), where the Authority reasonably believes that any Contractor Deliverable or consignment of Contractor Deliverables contains Counterfeit Materiel, it shall be entitled to:
 - (1) retain any Counterfeit Materiel; and/or
 - (2) retain the whole or any part of such Contractor Deliverable or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Contractor Deliverable, or consignment;
 and such retention shall not constitute acceptance under Condition 29 (Acceptance).
- e. Where the Authority intends to exercise its rights under clause 30.d, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange

at their own risk and expense and subject to any reasonable controls specified by the Authority, for:

- (1) the separation of Counterfeit Materiel from any Contractor Deliverable or part of a Contractor Deliverable; and/or
 - (2) the removal of any Contractor Deliverable or part of a Contractor Deliverable that the Authority is satisfied does not contain Counterfeit Materiel.
- f. In respect of any Contractor Deliverable, consignment or part thereof that is retained in accordance with clause 30.d, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under clause 30.e but the Contractor fails to do so within the period specified by the Authority and subject to clause 30.j, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:
- (1) to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
 - (2) to pass it to a relevant investigatory or regulatory authority;
 - (3) to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or
 - (4) to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

Exercise of the rights granted at clauses 30.f(1) to 30.f(3) shall not constitute acceptance under Condition 29 (Acceptance).

- g. Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under clause 30.f(4). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under clause 30.f(4) then the balance shall accrue to the Contractor.
- h. The Authority shall not use a retained Article or consignment other than as permitted in clauses 30.c – 30.j.
- i. The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- j. The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in clauses 30.c – 30.j except where it has been determined in accordance with Condition 40 (Dispute Resolution) that the Authority has made an incorrect determination in accordance with clause 30.c(4). In such circumstances the Authority shall reimburse the Contractors reasonable costs of complying with clause 30.c.

31. Diversion Orders

- a. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.
- b. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.
- c. The Authority reserves the right to cancel the Diversion Order.
- d. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.
- e. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.
- f. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with

applicable receipts and agreed as an amendment to the Contract in accordance with Condition 6 (Formal Amendments to the Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

32. Self-to-Self Delivery

Where it is stated in Schedule 3 (Contract Data Sheet) that any Contractor Deliverable is to be Delivered by the Contractor to their own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.

Licences and Intellectual Property

33. Import and Export Licences

- a. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.
- b. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:
 - (1) ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:
 - (a) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and
 - (b) the end use as: For the Purposes of HM Government; and
 - (2) include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- c. If the Contractor or any Subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.
- d. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.
- e. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the

Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

- (1) the Contractor shall, or procure that the Contractor's Subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) Business Days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and
 - (2) the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- f. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
 - g. Where the Authority invokes clause 33.e or 33.f the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.
 - h. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.
 - i. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.
 - j. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.
 - k. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
 - (1) a non-UK export licence, authorisation or exemption; or
 - (2) any other related transfer or export control,
 that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Condition 34 (Third Party Intellectual Property – Rights and Restrictions).
 - l. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to clause 33.k(1) or 33.k(2), they shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
 - m. If the information to be provided under clause 33.l has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain

- valid and satisfy the provisions of clause 33.l.
- n. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clauses 33.l or 33.m of which they become or are aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.
 - o. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under clause 33.l or 33.m of which they become aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those clauses by issuing an updated DEFFORM 528 to the Authority.
 - p. Where following receipt of materiel from a Subcontractor or any of their other suppliers restrictions are notified to the Contractor by that Subcontractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within ten (10) Business Days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within ten (10) Business Days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.
 - q. If the restrictions prevent the Contractor from performing their obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Condition 6 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in clause 33.r, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.
 - r. In the event that the restrictions notified to the Authority pursuant to clause 33.l were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to clauses 33.n or 33.p were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with clause 33.l, termination under clause 33.t will be in accordance with Condition 43 (Material Breach) and the provisions of clause 33.v will not apply.
 - s. The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of clause 33.k, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
 - t. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in

DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

u. Where:

- (1) restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to clauses 33.s or 33.t or both; or
- (2) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform their obligations under the Contract, the matter shall be handled under the terms of Condition 6 (Formal Amendments to the Contract) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of DEFCON 656B (Termination for Convenience) and as referenced in the Contract.

v. Pending agreement of any amendment of the Contract as set out in clause 33.q or 33.u, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from their obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

34. Third Party Intellectual Property – Rights and Restrictions

a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:

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

clause 34.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a Commercial Off The Shelf (COTS) item or service.

- b. If the Information required under clause 34.a has been notified previously, the Contractor may meet their obligations by giving details of the previous notification.
- c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an

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

- (1) the Authority has made or makes an admission of any sort relevant to such question;
 - (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
 - (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949;
 - (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- d. The indemnity in clause 34.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.
- f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
- g. If, under clause 34.a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
- (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
 - (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.
- h. The Authority shall assume all liability and shall indemnify the Contractor, their officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered

design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

- j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
 - (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
 - (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause 34.a.
- k. Where authorisation is given by the Authority under clause 34.e, 34.f or 34.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
 - (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
 - (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
 - (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
 - (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
 - (3) provision to the Authority of any Information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, their officers, agents and employees against liability, including costs as a result of:
 - (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
 - (2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of Information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:
 - (1) clauses 34.a – 34.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
 - (2) neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
 - (3) a Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition

- by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
- (4) the Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
- (5) following a notification under clause 34.n(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
- (6) the Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.
- p. Nothing in Condition 34 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.
- q. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

Notification of Intellectual Property Rights (IPR) Restrictions

- r. Where any of the conditions listed below (1 to 3) have been added to the Conditions of the Contract as project specific DEFCONs at clause 45, or where required by clauses 34.a - 34.q, the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 10 (Notification of Intellectual Property Rights (IPR) Restrictions).
 - (1) DEFCON 15 - including notification of any self-standing background Intellectual Property;
 - (2) DEFCON 90 - including copyright material supplied under clause 5;
 - (3) DEFCON 91 - limitations of Deliverable Software under clause 3b.
- s. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions in Schedule 10.
- t. Any amendment to Schedule 10 shall be made in accordance with Condition 6.

Pricing and Payment

35. Contract Price

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet) and shall be payable in accordance with Schedule 11 (Pricing and Payment).

- b. Subject to clause 35.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

36. Payment and Recovery of Sums Due

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 35.b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 35.a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 36.a and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 36.c after a reasonable time has passed.
- e. 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 under the Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

37. Value Added Tax and Other Taxes

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Customer Compliance Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal opinion from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains an opinion from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that opinion unless they propose to challenge the opinion. Where the Contractor challenges the opinion they shall supply to the Authority a copy of any final opinions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the opinion.
- d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The

Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.

- e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with Condition 40 (Dispute Resolution).
- g. Should HMRC assess that the Contractor has incorrectly determined the VAT liability, in accordance with clause 37.b above, the Authority will pay the VAT assessed by HMRC or the Contractor shall credit any VAT paid by the Authority over and above the HMRC assessment (as applicable). In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.
- h. Where the Contractor is a qualifying company or qualifying partnership for the purposes of any UK tax legislation the Contractor shall notify the Authority's Commercial Officer, in writing, where it has notified HMRC that a return it has delivered to HMRC includes an uncertain amount that relates to a contract it has entered into with the Authority. The Contractor shall notify the Authority within 20 Business Days of the notification it has provided to HMRC and provide the Authority with a copy of the notification. The Contractor shall continue to keep the Authority informed of any correspondence and/or discussions with HMRC in relation to the uncertain tax treatment within a reasonable time frame or upon request by the Authority.
- i. In the event that HMRC notifies the Contractor of any change to the tax treatment of a previously notified uncertain amount, the Contractor shall notify the Authority and provide a copy of HMRC's notification and assessment within 20 Business Days of receiving such notification and assessment.
- j. The Authority shall not be liable for any interest and/or penalty that the Contractor is required to pay to HMRC for a failure to notify HMRC of an uncertain amount.

38. Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Condition 10 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 38 shall be subject to:
 - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 36.f;
 - (2) all related rights of the Authority under the Contract in relation to the recovery of

- sums due but unpaid; and
- (3) the Authority receiving notification under both clauses 38.b and 38.c(2).
- b.** In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 38.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c.** The Contractor shall ensure that the Assignee:
 - (1) is made aware of the Authority's continuing rights under clauses 38.a(1) and 38.a(2); and
 - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 38.a(1) and 38.a(2).
- d.** The provisions of Condition 36 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

39. Subcontracting and Prompt Payment

- a.** Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.
- b.** Where the Contractor enters into a subcontract, they shall cause a term to be included in such subcontract:
- (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
 - (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
 - (3) providing that where the Contractor fails to comply with clause 39.b(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 39.b(2) after a reasonable time has passed; and
 - (4) requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as clauses 39.b(1) to 39.b(4).

Termination

40. Dispute Resolution

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to clause 40.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 40.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

41. Termination for Insolvency or Corrupt Gifts

Insolvency:

- a.** The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time

after any of the following events:

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- (6) where the Contractor is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay their debts if:
 - (a) they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or
 - (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
- (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (8) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

- (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (10) the court making an administration order in relation to the company; or
- (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (12) the company passing a resolution that the company shall be wound-up; or
- (13) the court making an order that the company shall be wound-up; or
- (14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in clauses 41.a(9) to 41.a(14) inclusive above.

- b.** Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

Corrupt Gifts:

- c.** The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):
- (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
 - (a) for doing or not doing (or for having done or not having done) any act in

- relation to the obtaining or execution of this or any other Contract with the Crown; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
 - (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
 - (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
 - (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
 - (3) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.
- e. In exercising its rights or remedies under this Condition, the Authority shall:
 - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
 - (2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.
- f. Recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

42. Not Used

43. Material Breach

- a. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of their obligations under the Contract.
- b. Where the Authority has terminated the Contract under clause 43.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
 - (1) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
 - (1) obtaining the Contractor Deliverable in substitution from another supplier.

44. Consequences of Termination

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after

termination.

Additional Conditions

45. Project specific DEFCONs and DEFCON SC variants that apply to this contract

DEFCON 76 (SC2)

DEFCON 76 (SC2) (Edn. 11/22) - Contractor's Personnel at Government Establishments

DEFCON 514A

DEFCON 514A (Edn. 03/16) - Failure of Performance under Research and Development Contracts

DEFCON 532A (SC2)

DEFCON 532A (SC2) (Edn. 05/22) -Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON 601 (SC)

DEFCON 601 (SC) (Edn. 03/15) - Redundant Material

DEFCON 602A (SC2)

DEFCON 602A (SC2) (Edn. 04/23) - Quality Assurance (With Deliverable Quality Plan)

DEFCON 602B

DEFCON 602B (Edn. 12/06) - Quality Assurance (Without Deliverable Quality Plan)

DEFCON 605 (SC2)

DEFCON 605 (SC2) (Edn. 11/17) - Financial Reports

DEFCON 611 (SC2)

DEFCON 611 (SC2) (Edn. 12/22) – Issued Property

DEFCON 627

DEFCON 627 (Edn. 11/21) - Quality Assurance - Requirement for a Certificate of Conformity

DEFCON 647 (SC2)

DEFCON 647 (SC2) (Edn. 05/21) - Financial Management Information

DEFCON 656B

DEFCON 656B (Edn. 08/16) (Termination for Convenience)

DEFCON 658 (SC2)

DEFCON 658 (SC2) (Edn.10/22) – Cyber

DEFCON 659A

DEFCON 659A (Edn. 09/21) - Security Measures

DEFCON 660

DEFCON 660 (Edn. 12/15) - Official-Sensitive Security Requirements

DEFCON 670 (SC2)

DEFCON 670 (SC2) (Edn. 11/17) – Tax Compliance

DEFCON 694 (SC2)

DEFCON 694 (SC2) (Edn. 07/21) - Accounting For Property of the Authority

DEFCON 697 - Narrative

Where the Authority has a requirement for the Contractor, a subcontractor, or both, to Deploy to undertake a task at an Expected Work Location in a CONDO Applicable Area (CAA), the provisions of DEFCON 697 shall apply. DEFCON 697 shall become effective when such a task is included in the Contract.

DEFCON 658 - Cyber Risk Profile - Moderate

Note: Further to DEFCON 658 the Cyber Risk Profile of the Contract is Moderate, as defined in Def Stan 05-138.

DEFCON 675

DEFCON 675 (Edn. 03/21) - Advertising Subcontracts (Defence and Security Public Contracts Regulations 2011 only)

DEFCON 678

DEFCON 678 (Edn. 09/19) - SME Spend Data Collection

DEFCON 532A (SC2)

DEFCON 532A (SC2) (Edn. 05/22) – Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

Intellectual Property Rights

DEFCON 703

DEFCON 703 (Edn. 06/21) - Intellectual Property Rights - Vesting in the Authority

46. Special Conditions that apply to this Contract
SC2 - ITT - Annex A - Limitation of Contractors Liability

a. LIMITATIONS ON LIABILITY

Definitions

- (1) In this Condition 46.a (Limitations on Liability), the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Contract Period” has the meaning given in Schedule 1 (Definitions of Contract);

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

(1) UK GDPR;

(2) DPA 2018; and

(3) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended,

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

“Deductions” has the meaning given in Schedule 1 (Definitions of Contract);

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

“DPA 2018” means the Data Protection Act 2018;

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

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

Unlimited liabilities

- (2) Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - (b) fraud or fraudulent misrepresentation by it or its employees;
 - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any liability to the extent it cannot be limited or excluded by law.

- (3) The financial caps on liability set out in clauses 46.a(4) and 46.a(5) below shall not apply to the following:
- (a) for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:
 - i. the Contractor's indemnity in relation to Condition 34 (Third Party IP – Rights and Restrictions);
 - ii. the Contractor's indemnity in relation to TUPE at Schedule 21 (Transfer Regulations);
 - (b) for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
 - i. not used;
 - ii. the Authority's indemnity in relation to TUPE under Schedule 21 (Transfer Regulations);
 - iii. the Authority's indemnities referred to in Condition 34 (Third Party IP – Rights and Restrictions);
 - iv. the Authority's indemnity referred to in DEFCON 656B (Termination for Convenience);
 - (c) breach by the Contractor of DEFCON 532A (Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)) and Data Protection Legislation; and
 - (d) to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.
 - (e) Not used.

Financial limits

- (4) Subject to clauses 46.a(2) and 46.a(3) and to the maximum extent permitted by Law:
- (a) throughout the Contract Period the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
 - i. in respect of DEFCON 76 (Contractor's Personnel at Government Establishments) [REDACTED] in aggregate;
 - ii. in respect of Condition 43 (Material Breach) [REDACTED] in aggregate;
 - iii. in respect of DEFCON 611 (Issued Property) [REDACTED] in aggregate; and
 - iv. in respect of condition 28.d (Delivery/Collection) [REDACTED] in aggregate;
 - v. in respect of any residual risk, comprising of lesser or undefinable areas of risk, can be considered [REDACTED] in aggregate
 - (b) without limiting clause 46.a(4)(a) and subject always to clauses 46.a(2), 46.a(3) and 46.a(4)(c), the Contractor's total liability throughout the Contract Period in respect of all other liabilities (but excluding any Deductions paid or payable in accordance with Schedule 14 (Incentivisation), whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be ([REDACTED]) in aggregate;
 - (c) on the exercise of any and, where more than one, each option period or agreed extension to the Contract Period, the limitation of the Contractor's total liability (in aggregate) set out in clauses 46.a(4)(a) and 46.a(4)(b) above shall be fully replenished such that on and from each such exercise or extension of the Contract Period, the Authority shall be able to claim up to the full value of the limitation set out in clauses

- 46.a(4)(a) and 46.a(4)(b) of this Contract.
- (5) Subject to clauses 46.a(2), 46.a(3) and 46.a(6), and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Contract Price paid by the Authority in the relevant Year in respect of any and all claims in that Year.
 - (6) Clause 46.a(5) shall not exclude or limit the Contractor's right under this Contract to claim for that part of the Contract Price due and payable by the Authority in respect of the relevant Year.

Consequential loss

- (7) Subject to clauses 46.a(2), 46.a(3) and 46.a(8), neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
 - (a) indirect loss or damage;
 - (b) special loss or damage;
 - (c) consequential loss or damage;
 - (d) loss of profits (whether direct or indirect);
 - (e) loss of turnover (whether direct or indirect);
 - (f) loss of business opportunities (whether direct or indirect); or
 - (g) damage to goodwill (whether direct or indirect),
 even if that Party was aware of the possibility of such loss or damage to the other Party.
- (8) The provisions of clause 46.a(7) shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
 - (a) any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - i. to any third party;
 - ii. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - iii. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - (b) any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
 - (c) the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Contract Period and any option period or agreed extension to the Contract Period (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
 - (d) any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
 - (e) damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 (Contractor's Personnel at

- Government Establishments) and 611 (Issued Property);
- (f) costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- (g) any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- (h) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- (i) any savings, discounts or price reductions during the Contract Period and any option period or agreed extension to the Contract Period committed to by the Contractor pursuant to this Contract.

Invalidity

- (9) If any limitation or provision contained or expressly referred to in this Condition 46.a (Limitations on Liability) is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition 46.a (Limitations on Liability).

Third party claims or losses

- (10) Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 (Intellectual Property Rights in Software) and Condition 34 (Third Party IP – Rights and Restrictions) or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
 - (a) arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
 - (b) is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

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

b. INTERDEPENDENT CONTRACTS

- (1) If, as a result of any default, negligence and/or breach by the Contractor or any Contractor Related Party of any of its or their obligations under or pursuant to any direct contracts between the Authority and the Contractor, the Authority is unable to comply with any or all of its obligations under Schedule 16 (Authority Obligations) then, notwithstanding any other provision of this Contract:

- (a) such failure by the Authority to comply with those obligations shall not be treated as a GFA Failure for the purposes of this Contract, provided that the Authority has used its reasonable endeavours to mitigate such failure;
- (b) the Contractor shall not be entitled to any relief and/or compensation of whatever nature (including any adjustment to the Contract Price) and howsoever arising in respect of such failure by the Authority to comply; and
- (c) nothing shall affect the Authority's rights under Schedule 11 (Pricing and Payment).

c. CO-OPERATION and PARTNERING

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

Value for Money
- (3) The Contractor shall support the Authority in demonstrating that any proposed Changes in accordance with Condition 6 (Formal Amendments to the Contract) will provide value for money.

Contract Management – Changes to Key Dates
- (4) The Authority's Representative shall notify the Contractor if at any time during the performance and delivery of the whole or any part of the Contractor Deliverables there is any proposal to:
 - (a) change any Key Date and/or the whole or part of the Contractor Deliverables that are to be delivered on that Key Date; and/or
 - (b) add an additional date on which another part of the Contractor Deliverables are to be delivered (and where such additional date is agreed in accordance with the following provisions of this clause 46.c, then such additional date shall become a Key Date for the purposes of this Contract),and such notification shall be deemed to be an Authority Change Notice.
- (5) The Contractor shall, (notwithstanding paragraph 7 of Schedule 4 (Contract Change Control Procedure)) within five (5) Business Days (or such longer period as is agreed between the Parties) of receipt of the Authority Change Notice issued in accordance with clause 46.c(4), acting reasonably and having regard to all relevant circumstances provide the Authority's Representative with a Contractor Change Proposal, such Contractor Change Proposal to include (without prejudice and in addition to the requirements of paragraph 8 of Schedule 4 (Contract Change Control Procedure)) a revised Contract Programme and full details of the anticipated impact of such proposal on the Contractor's obligations under this Contract, including details of the likely impact of such proposal:
 - (a) on the Contractor's progress against the delivery of the Contractor Deliverables, and completion of Acceptance in respect of all relevant Contractor Deliverables, as contemplated by Schedule 8 (Assurance and Acceptance Procedure);
 - (b) on any of the Authority's obligations under this Contract (including as set out in Schedule 16 (Authority Obligations)) and/or any contract with any Third Party entered into (or proposed to be entered into) by the Authority and/or any procurements being undertaken by or on behalf of the

Authority in any such case, in connection with this Contract and/or LE TacCIS (and of which the Contractor is aware (or ought reasonably to have been aware) and on which the provision of the Contractor Deliverables in the manner contemplated by this Contract prior to such proposal is dependent);

- (c) on the Contract Price; and
- (d) the steps and actions that the Contractor shall take to minimise the disruption caused by and mitigate the consequences of such change (including on the Contract Price),

to enable the Authority's Representative to consider (in its absolute discretion) whether to agree to such proposal.

- (6) The provisions of paragraphs 10 to 13 (inclusive) of Schedule 4 (Contract Change Control Procedure) shall apply in relation to the progression of the proposed Authority Change arising as a result of the provisions of clauses 46.c(4) and 46.c(5), provided always that the provisions of paragraph 10 of Schedule 4 (Contract Change Control Procedure) shall be construed such that the Contractor shall (without the requirement for the Authority to issue a modified Authority Change Notice) be required to make such amendments to the Contractor Change Proposal as are required to reflect any discussions undertaken and/or agreements reached by the Parties pursuant to paragraph 10 of Schedule 4 (Contract Change Control Procedure) and provide such amended Contractor Change Proposal to the Authority's Representative within such time period as the Authority's Representative shall reasonably specify having regard to all relevant circumstances, including:
 - (a) the nature and extent of any required amendments to the Contractor Change Proposal arising as a result of the discussions pursuant to paragraph 10 of Schedule 4 (Contract Change Control Procedure); and
 - (b) the timing implications of any unnecessary delay by the Contractor in providing any amended Contractor Change Proposal on the Authority's obligations under this Contract and/or any contract with any Third Party entered into (or proposed to be entered into) by the Authority and/or any procurements being undertaken by or on behalf of the Authority in any such case, in connection with this Contract and/or LE TacCIS (and of which the Contractor is aware (or ought reasonably to have been aware)).

d. AUTHORITY PERFORMANCE FAILURES

- (1) Subject to the provisions of clauses 46.d(8) to (13) (Discretionary GFA) (inclusive), if and to the extent that a GFA Failure is the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in Schedule 14 (Incentivisation) then subject to clause 46.d(2) (Authority Performance Failures) the Contractor is entitled, save where the GFA Failure has been caused by any act or omission of the Contractor or any Contractor Related Party under this Contract and/or any default, negligence and/or breach as described in clause 46.b (Interdependent Contracts), to apply for relief from those of its obligations that it is unable to perform as a direct result of such GFA Failure. If such act or omission of the Contractor or any Contractor Related Party and/or any default, negligence and/or breach as described in clause 46.b (Interdependent Contracts) has contributed to the GFA Failure, the Contractor's entitlement to relief shall be reduced by an amount proportional to such contribution to the GFA Failure.
- (2) To obtain relief pursuant to clause 46.d(1) (Authority Performance Failures) the Contractor shall:

- (a) as soon as practicable, and in any event within twenty (20) Business Days after it became aware that the GFA Failure has adversely affected or is likely to adversely affect the ability of the Contractor to provide the Contractor Deliverables or to perform its obligations, give to the Authority a notice of its claim for relief from its obligations under this Contract;
 - (b) as soon as practicable and in any event within ten (10) Business Days of service on the Authority of the notice referred to in clause 46.d(2)(a) (Authority Performance Failures) notify the Authority of full details which are available in respect of the GFA Failure and the relief claimed;
 - (c) comply with the provisions of this clause 46.d (Authority Performance Failures), the provisions of Schedule 14 (Incentivisation), the provisions of Schedule 15 (Governance and Management) and the provisions of Schedule 11 (Pricing and Payment);
 - (d) demonstrate to the reasonable satisfaction of the Authority that:
 - i. the GFA Failure was the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in Schedule 14 (Incentivisation); and
 - ii. the relief claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
 - (e) continue to perform its obligations under this Contract subject to the constraints of the GFA Failure.
- (3) If and to the extent that the Contractor has complied with its obligations under this clause 46.d (Authority Performance Failures), then:
- (a) the Authority shall not be entitled to exercise its rights arising as a result of the GFA Failure to terminate this Contract; and
 - (b) the Authority shall give the Contractor such relief from its obligations as the Authority considers is reasonable for such a GFA Failure, in accordance with the procedures described in Schedule 11 (Pricing and Payment) and Schedule 14 (Incentivisation).
- (4) If information referred to in this clause 46.d (Authority Performance Failures) is provided by the Contractor after the dates referred to in this clause 46.d (Authority Performance Failures) then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.
- (5) The Contractor shall notify the Authority if at any time it realises or becomes aware of any information relating to the GFA Failure, giving details of that information, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- (6) If the Parties cannot agree the extent of any relief from the Contractor's obligations under this Contract or the Authority disagrees that any GFA Failure has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this clause 46.d (Authority Performance Failures) the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.
- (7) The Contractor shall not be entitled to any common law or equitable rights (including rights to damages or to any other rights under contract, tort or otherwise) in relation to the occurrence or subsistence of any GFA Failure.

Discretionary GFA

- (8) If the Contractor requests that the Authority provide to the Contractor any Discretionary GFA, it shall do so by written notice to the Authority's Representative and any such notice shall:

- (a) provide a detailed description of the proposed Discretionary GFA;
 - (b) detail the period during which the proposed Discretionary GFA is required to be used by the Contractor and/or any Sub-Contractor;
 - (c) confirm how the Contractor and/or any Sub-Contractor intends to use such proposed Discretionary GFA;
 - (d) describe any benefits to the Authority arising as the result of the Authority providing such proposed Discretionary GFA; and
 - (e) identify any other relevant issues relating to the intended use by the Contractor and/or any Sub-Contractor of the proposed Discretionary GFA (including any impact on the provisions of this Contract and the performance by the Contractor of the Contractor Deliverables which may arise as the result of provision by the Authority of the proposed Discretionary GFA (including any proposed changes to Schedule 14 (Incentivisation) and Schedule 16 (Authority Obligations) or the relevant Task Order or relevant Option)).
- (9) The Authority's Representative may (but shall not be obliged to) consider any Contractor notice issued in accordance with clause 46.d(8) (Discretionary GFA). If the Authority's Representative does consider such notice, he may (but shall not be obliged to) respond to the Contractor by an Authority notice to be issued to the Contractor at any time following receipt of the relevant Contractor notice, such Authority notice (if issued by the Authority's Representative) shall:
- (a) require further information relating to the subject matter of the notice and/or invite the Contractor to discuss the proposal further at a time and place convenient to the Authority's Representative; and
 - (b) identify any additional contractual and/or other provisions which the Authority requires to be incorporated into the Contract as a condition of providing the proposed Discretionary GFA; or
 - (c) confirm that the Authority does not wish to provide the proposed Discretionary GFA.
- (10) The Contractor confirms that:
- (a) subject to clause 46.d(10)(b), Conditions 1, 2, 4, 8 of DEFCON 611 (Issued Property) (other than the reference to such Conditions being subject to Condition 11 of DEFCON 611) Conditions 9, 12, 13, 14 and 15 of DEFCON 611, DEFCON 694 (Accounting for the property of the Authority), shall (as a minimum) apply to any Discretionary GFA which is provided by the Authority to the Contractor following a request pursuant to clause 46.d(8) (Discretionary GFA) and Conditions 3, 5, 6, 7, 10 and 11 of DEFCON 611 (Issued Property) shall not apply to any such Discretionary GFA;
 - (b) prior to providing any proposed Discretionary GFA:
 - i. where any amendments to Conditions 1, 2, 4, 8, 9, 12, 13, 14, and 15 of DEFCON 611 (Issued Property), DEFCON 694 (Accounting for the property of the Authority) (each as referred to in clause 46.d(10)(a) (Discretionary GFA)) are required by the Authority and/or where any additional contractual provisions are required by the Authority following or subsequent to the matters contemplated in clauses 46.d(9)(a) and 46.d(9)(b) (Discretionary GFA), such amendments and/or additional contractual provisions shall be incorporated into this Contract by means of a Contractor Change Proposal (provided always that the Authority subsequently agrees to such Contractor Change Proposal) to be issued by the Contractor within a reasonable period following receipt of the Authority's notice and/or conclusion of the discussions referred to in clauses 46.d(9)(a) and 46.d(9)(b) (Discretionary GFA) and the

- provisions of Schedule 4 (Contract Change Control Procedure) shall apply; and
- ii. where no amendments or additional contractual provisions are required by the Authority as contemplated in clause 46.d(10)(b)i above or after a Change, when the procedures outlined in clause 46.d(10)(b)i above have been followed, the relevant proposed Discretionary GFA shall be set out in the table forming Part 3 (Discretionary GFA) to Schedule 16 (Authority Obligations) or the relevant Task Order or relevant Option, identifying:
 1. the nature of the Discretionary GFA;
 2. the date the Discretionary GFA is required by the Contractor and/or the Sub-Contractor;
 3. the period the Contractor and/or the Sub-Contractor requires the Discretionary GFA;
 4. any matters relating to the use by the Contractor and/or the Sub-Contractor of the Discretionary GFA; and
 5. any additional matters relating to the Discretionary GFA as may be agreed by the Parties (including any packaging or delivery instructions),
 and the provisions of clauses 46.d(12) and 46.d(13) (Discretionary GFA) and clause 46.a (Limitation on Liabilities) shall apply.
- (11) Notwithstanding any agreement between the Parties as to the period during which the Contractor and/or any Sub-Contractor may have use of any Discretionary GFA, the Authority's Representative may require any Discretionary GFA to be returned to the Authority or delivered to any Third Party at any place within the United Kingdom by notice in writing to the Contractor's Representative and the Contractor shall return or deliver such Discretionary GFA in accordance with any requirements set out in the notice and within three (3) Business Days of receipt of such notice.
 - (12) The Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any Discretionary GFA which it makes available to the Contractor and neither the Authority nor any of their agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
 - (a) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any Discretionary GFA which it provides to the Contractor; or
 - (b) the provision by the Authority of any Discretionary GFA and/or any requirement of the Authority for the Contractor to return any Discretionary GFA earlier than previously agreed by the Parties (in accordance with clause 46.d(9) (Discretionary GFA)) and/or any failure to make available to the Contractor any Discretionary GFA (whether or not the provision of the Discretionary GFA was the subject of a Change).
 - (13) Neither the provision by the Authority of any Discretionary GFA nor failure by the Authority to provide any Discretionary GFA shall:
 - (a) give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;
 - (b) give rise to a GFA Failure and where the Contractor has fully satisfied its obligations in clause 20.d(3);
 - (c) affect, modify, reduce or extinguish either the obligations of the Contractor under this Contract or the rights or remedies of the Authority under this Contract; or

- (d) subject to clauses 46.d(8)(e) and 46.d(9)(b) (Discretionary GFA), be taken to amend, add to, delete or waive any term or condition of this Contract.

e. STATES of EMERGENCY, PERIODS OF TENSION, PERIODS, TRANSITION to WAR and HOSTILITIES

- (1) The Contractor shall continue to provide the Contractor Deliverables required in peace, during any state of emergency (whether or not involving hostilities), periods of tension, in transition to war, during hostilities and in any period of surge. The Contractor shall provide all the Contractor Deliverables throughout such period of the state of emergency, tension, transition to war or hostility unless directed otherwise by the Authority. The Authority shall advise the Contractor of any changes or additions to the Contract requirements and the provisions of Condition 6 (Formal Amendments to the Contract) and Schedule 4 (Contract Change Control Procedure) shall apply, provided that the agreement or determination of any Change pursuant to Condition 6 (Formal Amendments to the Contract) and Schedule 4 (Contract Change Control Procedure) shall not relieve the Contractor of its obligation to comply with the Authority's directions under this clause 46.e (States of Emergency, Periods of Tension, Transition to War and Hostilities) in the period up to the agreement or determination of such Change.

f. AUTHORITY DATA

- (1) For the purposes of this clause 46.f (Authority Data), "**Authority Data**" means:
 - (a) the data, text, drawings, diagrams or images (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:
 - i. which are supplied to the Contractor by or on behalf of the Authority; or
 - ii. which the Contractor is required to generate, process, store or transmit and which are material to the performance of this Contract; or
 - (b) any Personal Data for which the Authority is the Controller, provided that, for the avoidance of doubt, the term Authority Data does not imply any ownership rights in any Authority Data pursuant to this clause 46.f (Authority Data).
- (2) The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- (3) The Contractor shall not store, copy, disclose, modify, adapt or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract (and in accordance with the relevant licence rights referred to in this Contract) or as otherwise expressly authorised in writing by the Authority.
- (4) To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format reasonably specified by the Authority from time to time and/or specified in the Statement of Requirements (in each case at no additional cost to the Authority).
- (5) The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- (6) The Contractor shall perform secure back-ups of all electronic Authority Data held on the Contractor's IT systems and shall ensure that up-to-date back-ups are stored in accordance with Good Industry Practice and the Business Continuity Plan and the Contractor shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure back-ups of all

electronic Authority Data held on the Sub-Contractor's IT systems. The Contractor shall ensure that such back-ups are made available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed by the Parties in writing).

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

Malicious Software

- (10) The Contractor shall, as an enduring obligation throughout the term of this Contract and without prejudice to its obligations in Schedule 2 (Statement of Requirements):
 - (a) use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of any Malicious Software in the Contractor System; and
 - (b) use all reasonable endeavours to ensure that neither it nor any Contractor Related Party introduces any Malicious Software into the Authority System.
- (11) Notwithstanding clause 46.f(10) (Malicious Software), if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses.
- (12) Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 46.f(11) (Malicious Software) shall be borne by the Parties as follows:
 - (a) by the Contractor where such Malicious Software has been introduced
 - (b) by the Contractor and/or any Contractor Related Party, including where such Malicious Software originates from the Contractor System, any Third Party software supplied by the Contractor or the Authority Data (whilst the Authority Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Contractor; or
 - (c) by a Third Party as a result of a security vulnerability in the Contractor System or any Third Party software supplied by the Contractor and/or a failure by the Contractor to comply with clause 46.f(10) (Malicious Software); and

(d) otherwise by the Authority.

g. AUTHORITY DISCLOSED DATA

- (1) Subject to clause 46.g(3) (Authority Disclosed Data) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority prior to and/or after the Effective Date of Contract and neither the Authority nor any of their agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
 - (a) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority prior to and/or after the Effective Date of Contract; or
 - (b) any failure to make available to the Contractor prior to and/or after the Effective Date of Contract any materials, documents, drawings, plans or other information relating to this Contract.
- (2) The Contractor acknowledges that any data (including all information provided by the Authority to the Contractor for the purposes of assisting the Contractor to carry out the Contractor Deliverables or providing contextual or other information relating to the Contractor Deliverables and/or LE TacCIS and/or other related contracts and procurements) is data for the purposes of this clause 46.g (Authority Disclosed Data) and, for the avoidance of doubt, in addition to the restriction of liability of the Authority as set out in this clause 46.g (Authority Disclosed Data), the Contractor shall not be entitled to any relief from its obligations under this Contract in the event that any of such data disclosed by the Authority is as described in clause 46.g(1)(a) (Authority Disclosed Data) and/or is not made available to the Contractor as described in clause 46.g(1)(b) (Authority Disclosed Data).
- (3) Nothing in this clause 46.g (Authority Disclosed Data) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to and/or after the Effective Date of Contract.

h. CONTRACTOR RELATED PARTIES

Responsibility for Contractor Related Parties

- (1) Subject to clauses 46.b (Interdependent Contracts), 46.d (Authority Performance Failures) and DEFCON 76 (The Contractor's Property and Personnel at Government Establishments), the Contractor shall be responsible and liable for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor.
- (2) The Contractor shall ensure and/or procure that all Contractor Related Parties employed and/or engaged in connection with this Contract are appropriately qualified, trained and experienced.

Key Personnel

- (3) The Contractor shall ensure that the Key Personnel fulfil the Key Roles during the Contract Period.
- (4) Schedule 20 (Key Personnel) lists the Key Roles and the names of the persons who the Contractor shall appoint to undertake those Key Roles as at the Effective Date of Contract.
- (5) The Authority may identify any further roles as being Key Roles and the

relevant person selected to undertake those Key Roles shall be included on the list of Key Personnel in Schedule 20 (Key Personnel), the relevant Task Order or the relevant Option.

- (6) The Contractor shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
 - (a) requested to do so by the Authority's Representative; or
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
 - (c) the person's employment or contractual arrangement with the Contractor or a Sub-Contractor is terminated for material breach of contract by the employee; and
 - (d) (in any case) the Contractor has obtained the prior written consent of the Authority's Representative (which he shall be entitled to withhold in his absolute discretion) in respect of any proposed replacement,and where the Contractor fails to comply with the provisions of this clause 46.h(6) then the Authority's Representative shall be entitled:
 - (i) to refuse any proposed replacement Key Personnel admission to any Authority Site and/or any Other Contractor's Premises (as applicable); and/or
 - (ii) to issue a notice to the Contractor requiring compliance with the provisions of clauses 46.h(3) to 46.h(7) (inclusive) (including, in particular, clause 46.h(d) in respect of the removal and/or any proposed replacement of such Key Personnel and where the Contractor fails to comply with the provisions of clauses 46.h(3) to 46.h(7) (inclusive) following receipt of such notice from the Authority's Representative, such continued non-compliance shall be deemed to be a Persistent Breach in respect of which the Authority's Representative shall be entitled to issue further and additional Warning Notices in respect of each subsequent twenty (20) Business Day period (commencing on the date of the issue of the initial notice) during which such continued non-compliance persists.
- (7) The Contractor shall:
 - (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than ten (10) Business Days;
 - (c) without prejudice to clauses 46.h(6) and 46.h(7)(e), give as much notice as is reasonably practicable of:
 - (i) the need to replace any member of Key Personnel; and
 - (ii) the identity of the proposed replacement of such member of Key Personnel, together with details of the qualifications and experience of the proposed replacement of such member of Key Personnel,and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Business Days' notice;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such

change does not have an adverse impact on the performance of the Contractor Deliverables; and

- (e) ensure that any proposed replacement Key Personnel for a Key Role:
 - i. has a level of qualifications and experience appropriate to the relevant Key Role; and
 - ii. is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

i. INSURANCES

- (1) Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 13 (Required Insurances) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 13 (Required Insurances) and any other insurances required by law (together the “**Required Insurances**”). The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- (2) The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- (3) Where specified in Schedule 13 (Required Insurances), the Contractor shall ensure that the relevant policy of insurance shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Contract.
- (4) The Contractor shall not (and the Contractor shall procure that none of its Sub-Contractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- (5) If the Contractor is in breach of clause 46.i(1) (Insurances), the Authority may elect, but shall not be obliged, to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- (6) The Contractor shall, upon the date of this Contract and within fifteen (15) Business Days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet the requirements of this clause 46.i (Insurances) and Schedule 13 (Required Insurances). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this clause 46.i(6) (Insurances) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor’s liability under this Contract.
- (7) The Contractor shall notify the Authority at least ten (10) Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. This clause 7 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with clause 46.i(1) (Insurances).
- (8) The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Contractor Deliverables and/or this Contract for which it may be

entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Contractor Deliverables or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- (9) Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) after any:
 - (a) incident or circumstances which may give rise to a claim amounting to or in excess of [REDACTED] in connection with this Contract and the Required Insurances; and
 - (b) if the incident or circumstances may give rise to any claim in connection with this Contract which may be in excess of the limits of Required Insurances in Schedule 13 (Required Insurances).
- (10) Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- (11) Where any Required Insurance referred to in Schedule 13 (Required Insurances) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.
- (12) Where the minimum limit of indemnity required in relation to any of the Required Insurances is provided "in the aggregate" and a claim or claims are notified to insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract.

j. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TUPE)

- (1) The Parties shall comply with their respective rights and obligations in Schedule 21 (Transfer Regulations).

k. TASKING

Contractor Deliverables and Pricing and Payment

- (1) The Core Contractor Deliverables are to be performed in accordance with this Contract for the Core Contractor Deliverables Firm Price (which has been calculated in accordance with the Unit Rates in the Price List.
- (2) The Core Contractor Deliverables Firm Price is more particularly described in paragraph 1 of Part 2 of Schedule 11 (Pricing and Payment) and may be amended through the commencement of an Active Tasking Order in accordance with the provisions of Schedule 12 (Tasking Process) and/or in accordance with the procedures in Schedule 4 (Contract Change Control Procedure).
- (3) The Core Contractor Deliverables Payment for each Contract Month is calculated in accordance with paragraph 1 of Part 1 of Schedule 11 (Pricing and Payment).

Approval of Tasking Proposals

- (4) The provisions of Schedule 12 (Tasking Process) shall apply in relation to the proposal, review and, where applicable, approval of Tasking Proposals in relation to adjustments to the Core Contractor Deliverables and/or any Exercised Option.
- (5) All Tasking Proposals shall be prepared and delivered by the Contractor in accordance with the provisions of Schedule 12 (Tasking Process).
- (6) Where a Tasking Proposal has been authorised by the Authority pursuant to Tasking Form Part 3 – Customer Authorisation set out at Schedule 12 (Tasking Process), then the Proposed Additional Contractor Deliverables to be carried out and performed by the Contractor as set out in the relevant approved Tasking form shall be deemed to become part of the Contractor Deliverables and the Contractor shall update the relevant parts of this Contract to reflect the agreed changes to this Contract as permitted in accordance with Schedule 12 (Tasking Process) and the Contractor and the Authority shall each evidence their agreement to the proposed changes in writing.
- (7) The Authority makes no representations regarding the level of Additional Contractor Deliverables it will require from the Contractor and, for the avoidance of doubt:
 - (a) the Authority shall not be obliged:
 - i. to place any Tasking with the Contractor for any Additional Contractor Deliverables; or
 - ii. to accept or approve any Tasking Proposal; and
 - (b) the provisions of clause 46k(13) (Competition/Alternative Sourcing) shall apply in relation to the rights of the Authority to require others to carry out (or carry out by itself) certain of the Contractor Deliverables. The Contractor shall only be granted exclusivity for the provision of those Contractor Deliverables which are Core Contractor Deliverables and only for the period until the Original Expiry Date and shall not be granted any exclusivity in relation to the performance of the other Contractor Deliverables or the exercise by the Authority of any Option.

Third Party/Authority to provide the Contractor Deliverables

- (8) The Authority may appoint a Third Party and/or the Authority to:
 - (a) provide the whole or any part of the Contractor Deliverables where the Contractor is in breach of its obligations under this Contract; and/or
 - (b) provide the whole or any part of the Contractor Deliverables which are the subject of a Tasking request where the Contractor confirms that it does not intend to submit a Tasking Proposal or where the Contractor fails to submit a Tasking Proposal following receipt of a Tasking request within the time period specified in and in accordance with the provisions of Schedule 12 (Tasking Process).
- (9) Without prejudice to the provisions of Schedule 12 (Tasking Process), the Contractor shall not be entitled to any payment, compensation, damages, costs, losses and/or expenses arising out of or in connection with the circumstances set out in clause 46.k(8) (Third Party to provide the Contractor Deliverables).

Consequences of appointing a Third Party

- (10) Where the Authority exercises its rights pursuant to clause 46.k(8) (Third Party to provide the Contractor Deliverables), then:
 - (a) the Contractor shall, at its own cost, comply with the provisions of clause 46.k(10) (Consequences of appointing a Third Party) (insofar as such clause is relevant); and

- (b) where the reason for the Authority exercising such rights is due to a breach of the Contractor of its obligations under this Contract, the Contractor shall indemnify the Authority against all of the Authority's Losses arising out of or in connection with the exercise of such rights (including all internal costs and all additional costs, liabilities, losses and/or expenses over and above those which the Authority would reasonably have incurred under this Contract (in respect of the delivery of the whole or the relevant part (as the case may be) of the Additional Contractor Deliverables) had the Contractor complied with its obligations under this Contract).
- (11) Where the Authority exercises its rights pursuant to clause 46.k(8) (Third Party to provide the Contractor Deliverables), then, the Authority shall notify the Contractor in writing of the following:
 - (a) the action it wishes to take;
 - (b) the reason for such action;
 - (c) the date it wishes to commence such action; and
 - (d) to the extent practicable, the effect on the Contractor and its obligation to provide the whole or part of the Contractor Deliverables.
- (12) Following service of notice pursuant to clause 46.k(11) (Consequences of appointing a Third Party), the Authority shall, either by itself or by engaging others, take such action as notified under clause 46.k(11) (Consequences of appointing a Third Party), and any consequential additional action as it reasonably believes is necessary and the Contractor shall give all reasonable assistance to the Authority or such others identified by the Authority (as the case may be) and the Contractor shall not be entitled to claim a GFA Failure and/or shall not be entitled to any increase in the Core Contractor Deliverables Firm Price or the Option Firm Price and/or any additional payment and/or compensation of whatever nature and whosever arising in connection with the giving of such assistance.

Competition/Alternative Sourcing

- (13) The Contractor accepts that:
 - (a) subject to clauses 46k(13)(b) and 46k(13)(C) (Competition/Alternative Sourcing), the Authority may invite competitive quotations from the Contractor and/or others and, as appropriate, place orders elsewhere, appointing Third Parties or carrying out work itself for any or all of the Contractor Deliverables during the Contract Period;
 - (b) other than in the circumstances set out in clause 46k(8) (Third party/Authority to provide Contractor Deliverables) (and clause 46k(13)(C) (Competition/Alternative Sourcing) in respect of the right for the Authority to carry out work itself or elect that certain work forming part of the Contractor Deliverables is no longer required to be performed), the Authority shall not have the right to invite competitive quotations from the Contractor and others and, as appropriate, to place orders elsewhere, appointing Third Parties in respect of:
 - i. any of the Core Contractor Deliverables to be performed prior to the Original Expiry Date; and
 - ii. any Contractor Deliverables which are the subject of an Exercised Option; and
 - iii. any Contractor Deliverables which are the subject of a Tasking Order which has been approved in accordance with Schedule 12 (Tasking Process);
 - (c) provided always that nothing in this clause 46k(13) shall prevent the Authority (at any time) from reducing the amount of and/or amending the scope of any of the Contractor Deliverables through a Tasking Proposal

or a Change:

- i. in order that the Authority can carry out itself work which is the subject of the Contractor Deliverable; and/or
- ii. to end work which is the subject of a Contractor Deliverable which the Authority has determined (in its absolute discretion) is no longer required to be carried out.

I. CONTRACT PERIOD AND OPTIONS

Contract Period

- (1) Subject to clauses 46.l(2) to 46.l(11) (inclusive) (Exercise of Options), this Contract and the rights and obligations of the Parties shall take effect on the Effective Date of Contract and, except as set out in clause 46.o (Continuing Obligations), shall terminate on the earlier of:
 - (a) the Expiry Date, as the same may be extended following the exercise by the Authority of Option 1 and/or Option 2; and
 - (b) the Termination Date.

Exercise of Options

- (2) In consideration of the Authority agreeing to enter into this Contract, the Contractor hereby grants to the Authority the right to exercise the Options. For the avoidance of doubt, the Authority gives no warranty or guarantee that any of the Options will be exercised.
- (3) If the Authority elects to exercise one or more of the Options, the following provisions of this clause 46.l shall apply.
- (4) Subject to clause 46.46.l **Error! Reference source not found.**(c), the Authority shall issue a notice to the Contractor (such notice confirming that the Authority is considering exercising the relevant identified Option, subject to the Authority and the Contractor confirming the Option Firm Price and other matters relating to such Option) (an “**Option Notice**”) and such Option Notice may be issued by the Authority:
 - (a) in the case of the Option 1, on or before 31 January 2027 (or such later period as the Parties may agree);
 - (b) in the case of the Option 2, where Option 1 became an Exercised Option on or before Year 4, on or before six (6) months prior to the expiry date of Option 1 (or such later period as the Parties may agree);
 - (c) in the case of any of SOR Appendix 13 Option to SOR Appendix 34 Option, the Authority shall on the Effective Date of Contract notify the Contractor which if any of SOR Appendix 13 Option to SOR Appendix 34 Option shall be exercised and any such identified SOR Appendix 13 Option to SOR Appendix 34 Option shall take effect and become an Exercised Option on and from the Effective Date of Contract;
 - (d) in the case of any of SOR Appendix 13 Option to SOR Appendix 34 Option that is not exercised by the Authority on the Effective Date of Contract pursuant to clause 46.46.l(4)(c), on twenty (20) Business Days’ notice,

provided always that the date on which the Authority issues the relevant Option Notice occurs either:

- i. prior to the Original Expiry Date; or
- ii. after the Original Expiry Date, but only in circumstances where the

date of issue of the relevant Option Notice occurs in the period during which Option 1 and/or Option 2, previously exercised by the Authority in accordance with this clause 46.I (Contract Period and Options), is or are subsisting.

- (5) The terms (including the scope of Articles and/or services) which the Parties intend shall govern each Option are those set out in:
 - (a) in the case of Option 1 and Option 2, the general provisions of the Statement of Requirements and Appendices 1 to 12 (inclusive) of the Statement of Requirements; and
 - (b) in the case of each of SOR Appendix 13 Option to SOR Appendix 34 Option, the general provisions of the Statement of Requirements and Appendix 13 to Appendix 34 of the Statement of Requirements,

and the Parties agree that where an Option is exercised by the Authority in accordance with this clause 46.I (Contract Period and Options), the following provisions in clauses 46.46.I(6) to 46.I(11) (Exercise of Options) (inclusive) shall apply.

- (6) Any of SOR Appendix 13 Option to SOR Appendix 34 Option, if it becomes an Exercised Option at the commencement of any Year, shall subsist for a period of one (1) Year, save that if an Option Notice is issued by the Authority in respect of any of SOR Appendix 13 Option to SOR Appendix 34 Option at any time during a part of a Year pursuant to clause 46.I(4)(d), the relevant Option shall only be effective for the remainder of the Year in which the relevant Option became an Exercised Option and the Parties shall agree an appropriate pro rata reduction of the relevant Option Firm Price for that Exercised Option. The Authority may issue a further Option Notice in respect of the same SOR Appendix 13 Option to SOR Appendix 34 Option in any subsequent Year or part of a Year on the provision of twenty (20) Business Days' notice.
- (7) Subject to clause 46.I(8), the proposed Option Firm Price in respect of SOR Appendix 13 Option to SOR Appendix 34 Option is set out in the Schedule of Requirements and the Parties agree that such proposed Option Firm Price (or, where an Option is an Exercised Option, the Option Firm Price) can only be increased or decreased in accordance with the provisions of paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment).
- (8) The Contractor confirms that it has made its own assumption as to the Year in which the provision of Contractor Deliverables relating to Options SOR [REDACTED] and SOR [REDACTED] may become an Exercised Option. Accordingly, SOR [REDACTED] and SOR [REDACTED] are [REDACTED] based on the Contractor's assumption on the scope and duration of the Contractor Deliverables set out in Options SOR [REDACTED] and SOR [REDACTED] that any such Option will not be exercised by the Authority in [REDACTED]. The Authority has made no statement on the accuracy of the Contractor's assumption and reserves the right to exercise any of such [REDACTED] at any time during the Contract Period in its absolute discretion. If the Authority elects to exercise any of Options SOR [REDACTED] and/or SOR [REDACTED] in any Year that is [REDACTED], the Contractor confirms that:
 - (a) the Option Firm Price for the relevant Option SOR [REDACTED] and/or SOR [REDACTED] is included in an [REDACTED]; and
 - (b) at such time as Option SOR [REDACTED] and/or SOR [REDACTED] becomes an Exercised Option, it shall carry out and perform such Option SOR [REDACTED] and/or SOR [REDACTED] at no further cost to the Authority, subject to the provisions of Schedule 11 (Pricing and Payment) as a result of any approved Changes to the scope of Option

SOR [REDACTED] and/or SOR [REDACTED] pursuant to Schedule 4 (Contract Change Control Procedure) and/or Schedule 12 (Tasking Process)).

- (9) The proposed Option Firm Price in respect of Option 1 and/or Option 2 shall be the Core Contractor Deliverables Firm Price at Year 1 and the Parties agree that such proposed Option Firm Price in respect of Option 1 and/or Option 2 (or, where Option 1 and/or Option 2 is an Exercised Option, the Option Firm Price) can only be increased or decreased in accordance with the provisions of paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment).
- (10) In the event of any Dispute in relation to any Option which is the subject of an Option Notice, either Party shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Procedure.
- (11) Following the agreement (including agreement to the terms of any Option as set out in the Schedule of Requirements at the Effective Date of Contract, without amendment) or determination of the Option Firm Price and/or Milestones and/or the Milestone Payments Schedule and/or other proposed changes:
 - (a) the Parties shall proceed as if the agreed (or determined) terms of the relevant Option were a Contractor Change Proposal confirmed by the Authority in accordance with Schedule 4 (Contract Change Control Procedure) and the Parties shall enter into any documents required to give effect to the relevant Option and commence the implementation of the relevant Option; and
 - (b) the rights and obligations of the Parties in respect of the relevant Option, shall take effect from the date specified in the documents referred to in clause 46.l(10)(a) (when such documents have been duly executed by the Parties and consequently the Option then becomes an Exercised Option) and shall form rights and obligations under this Contract.
- (12) Following the exercise of any of the Options pursuant to this clause 46.l (Contract Period and Options), any rights and obligations of the Parties existing under this Contract prior to the exercise of such Option shall continue to apply.

m. DISPUTED AMOUNTS

- (1) The Authority may withhold payment of any amount it believes, acting reasonably, the Contractor is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount. The Authority shall notify the Contractor of the reasons for withholding the Disputed Amount (together with supporting evidence) on or before the day on which the Disputed Amount would (but for this clause 46.m(1) (Disputed Amounts)) otherwise fall due.
- (2) The Authority shall pay any undisputed amounts on or before the day on which they fall due.
- (3) Within ten (10) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to clause 46.m(1) (Disputed Amounts) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, the Authority shall be entitled:
 - (a) to retain on a permanent basis any amounts withheld pursuant to clause 46.m(1) (Disputed Amounts); and
 - (b) to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, and reserves the right to claim

interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

- (4) If the Contractor responds pursuant to clause 46.m(3) (Disputed Amounts) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to clause 46.m(1) (Disputed Amounts) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under the Dispute Resolution Procedure.
- (5) If the determination of any Dispute conducted pursuant to clause 46.m(4) (Disputed Amounts) shows that:
 - (a) the Authority has withheld any amount which the Contractor was entitled to be paid; or
 - (b) the Contractor has claimed under Condition 36 (Payment and Recovery of Sums Due) any amount which it was not entitled to be paid,
 the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest (if applicable) in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of a failure to pay by the Authority) or from the date on which the over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

n. PERSISTENT BREACH

- (1) The Authority may terminate this Contract on the occurrence of a Persistent Breach.

o. CONTINUING OBLIGATIONS

- (1) Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract:
 - (a) termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and
 - (b) termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:
 - i. Condition 1.c (Contractor's Warranty);
 - ii. Condition 17 (Records);
 - iii. Condition 34 (Third Party Intellectual property – Rights and Restrictions);
 - iv. Condition 40 (Dispute Resolution);
 - v. Condition 43.b (Right to Claim Damages on Termination for Material Breach);
 - vi. Condition 46.a (Limitations on Liability);
 - vii. Condition 46.j (TUPE);
 - viii. DEFCON 611 (Issued Property);
 - ix. DEFCON 656B (Termination for Convenience);
 - x. DEFCON 658 (Cyber);
 - xi. DEFCON 659A (Security Measures)
 - xii. DEFCON 660 (Official-Sensitive Security Requirements);
 - xiii. DEFCON 670 (Tax Compliance);
 - xiv. DEFCON 703 (Intellectual Property Rights – Vesting in the

- Authority)
- xv. any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

p. SCHEDULES TO CONTRACT

- (1) Without prejudice to any other provision in this Contract, the Parties shall throughout the Contract Period give effect to the provisions of:
 - (a) Schedule 2 (Statement of Requirements);
 - (b) Schedule 12 (Tasking Process);
 - (c) Schedule 14 (Incentivisation);
 - (d) Schedule 15 (Governance and Management);
 - (e) Schedule 17 (Exit Plan);
 - (f) Schedule 22 (Outcomes and Open Book Data and Audit Reports);
 - (g) Schedule 23 (Security Conditions);
 - (h) Schedule 24 (ITAR Requirements).
 - (i) Schedule 25 (Contractor's Proposal)

q. EXIT PLAN

- (1) The Parties have agreed that the matters which are likely to be required to be implemented on expiry or early termination of this Contract are set out in Schedule 15 (Governance and Management) and Schedule 17 (Exit Plan). The Parties have agreed that on the earlier to occur of:
 - (a) six (6) calendar months from the Expiry Date; and
 - (b) ten (10) Working Days following receipt of a written notice from the Authority,
 the Contractor shall review the Exit Plan in accordance with Good Industry Practice, having due regard to the status of the Contractor Deliverables and any other relevant factors at that time and issue to the Authority a proposed update and revision of the Exit Plan, giving full details of the rationale for any proposed changes. Following receipt by the Authority of the revised Exit Plan and rationale, the Contractor and the Authority shall meet (as soon as reasonably practicable and on such number of occasions as the Authority may reasonably require) and in accordance with Schedule 15 (Governance and Management) to discuss and make any agreed amendments to the revised Exit Plan.
- (2) The Parties acknowledge that:
 - (a) the preparation and development of the Exit Plan as contemplated in this clause 46.q (Exit Plan) forms part of this Contract and forms part of the Contract Price;
 - (b) subject to clauses 46.q(2)(c) and 46.q(2)(d) (Exit Plan), the Contract Price does not incorporate sums relating to the carrying out of all of the steps set out in the Exit Plan; and
 - (c) notwithstanding the provisions of clause 46.q(2)(b) (Exit Plan), the Contractor shall be obliged to carry out those activities described in clause 46.r (Continuing Assistance) whether or not such activities are also incorporated or contemplated or referred to in the Exit Plan and the Contractor acknowledges that it has incorporated pricing for the performance of such activities in clause 46.r (Continuing Assistance), save for the obligations in clause 46.r(3) (Co-operation), in the Contract Price; and
 - (d) in the event that the Authority wishes to require the Contractor to perform:
 - i. any obligations identified in the Exit Plan (as may have been

updated or revised) in addition to those activities referred to in clause 46.q(2)(c) (Exit Plan); and/or

ii. those obligations set out in clause 46.r(3) (Co-operation), the Authority shall issue an Authority Change Notice and the Contractor shall not be permitted to object to such proposed Authority Change, notwithstanding any other provisions of this Contract and the price for such obligations as detailed in the Authority Change shall be fair and reasonable.

r. CONTINUING ASSISTANCE

Co-operation

- (1) Without prejudice to the provisions of clause 46.j (TUPE) and clause 46.q (Exit Plan), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting the Contractor shall co-operate as far as is reasonably practicable with the transfer of responsibility for the provision of the Contractor Deliverables (or part of the Contractor Deliverables) from the Contractor to any person (a **"Follow-On Contractor"**) or to the Authority as so directed by the Authority, and for the purposes of this clause 46.r (Continuing Assistance) the meaning of the term co-operate shall include:
 - (a) liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the provision of the whole or the relevant part of the Contractor Deliverables and their transfer to the Authority or such Follow-On Contractor;
 - (b) allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to any assets applicable to the performance of this Contract, but not so as to interfere with or impede the provision of the Contractor Deliverables; and
 - (c) providing to the Authority and/or any Follow-On Contractor any relevant information concerning the Authority Sites and/or the JPO Facility (as applicable) and the provision of the Contractor Deliverables which is reasonably required for the efficient transfer of responsibility for the performance of the Contractor's obligations under this Contract.
- (2) Without prejudice to DEFCON 611 (Issued Property), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting, the Contractor shall protect and preserve material, Articles and Issued Property in its possession, custody or control in which the Authority has notified an interest, provided that the Contractor shall be entitled to use such material, Articles and Issued Property in accordance with the provisions of this Contract where it is agreed that the provision of the Contractor Deliverables requires the use of that material and/or those Articles and/or Issued Property in part or in its entirety.
- (3) For a period of six (6) months after the Expiry Date or, if earlier, the Termination Date, the Contractor shall, if requested to do so in writing by the Authority, provide all reasonable assistance, guidance and information to the Authority or any Follow-On Contractor (as the case may be) required by the Authority or any Follow-On Contractor.
- (4) Without prejudice to the provisions of clauses 46.r(1), 46.r(2) and 46.r(3) (Co-operation), the Contractor shall use all reasonable endeavours to assist the Authority to facilitate the smooth transfer of responsibility for the provision of the Contractor Deliverables (or any part of the Contractor Deliverables) to the Authority or Follow-On Contractor, as the case may be, and the Contractor shall take no action at any time during the term of this Contract or thereafter which is calculated or intended to prejudice or frustrate or make more difficult any such transfer.

- (5) Following the Expiry Date or, if earlier, the Termination Date, the Contractor shall, with the Authority's consent (not to be unreasonably withheld or delayed) be allowed reasonable access to the Authority Sites and/or the JPO Facility (as the case may be) by the Authority in order to carry out winding-down activities, provided that in exercising such right of access, the Contractor shall not interfere with or impede the delivery of goods and/or services equivalent to the Contractor Deliverables (and/or the provision of any other services and/or the carrying out of any other activities) by or on behalf of the Authority and/or any Follow-On Contractor.
- (6) On expiry or earlier termination of this Contract, the Contractor shall:
 - (a) upon request by the Authority make arrangements, to be agreed between the Authority and the Contractor (acting reasonably and in good faith), for the Authority to take over at fair and reasonable prices, where payment has not already been made, the rights, title and interest in such Articles and/or material as are held by the Contractor and/or any Sub-Contractor and which the Authority requires to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Expiry Date or, if earlier, the Termination Date; and
 - (b) provide, procure the provision of, or provide access to, as the Authority may require, all such information, documents and data in the possession or control of the Contractor, together with a sufficient explanation of such information, documents and data, the full rights to use such information, documents and data, and a formal certificate confirming those rights, as is required to put the Authority in the position it would have been had there been full and proper performance by the Contractor of the Contractor Deliverables.
- (7) The Contractor agrees that following the early termination of this Contract, the Authority shall be entitled to continue to purchase (and the Contractor shall continue to supply) on reasonable terms and conditions at fair and reasonable prices goods and services (which would, but for the expiry or early termination of this Contract, amount to Articles) which are required by the Authority to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Termination Date.
- (8) The Contractor shall not be obliged to co-operate with a Follow-On Contractor where this Contract is terminated under DEFCON 656B (Termination for Convenience).

s. EXPORT CONTROLLED ARTICLES AND ITAR

- (1) The Contractor shall handle any Export Controlled Articles (including but not limited to software, information, technical data and publications) in accordance with all applicable export regulations.
- (2) When requested by the Authority, the Contractor shall (and shall procure that any Sub-Contractors shall) sign a non-disclosure agreement ("**NDA**") in relation to ITAR in the form set out in Schedule 24 (ITAR NDA).

t. CONFLICTS OF INTEREST AND IMPARTIALITY

- (1) The Contractor has notified the Authority of its intention to operate a conflicts of interest regime ("**Conflicts Regime**") and, unless otherwise agreed between the Parties, shall produce a Conflicts Regime no later than the Effective Date of Contract. The Contractor acknowledges that its obligations under this Contract and its aspiration to participate to be a provider of goods and/or services in future procurements connected with the MORPHEUS Programme will require the

careful management of information both internally and externally by the Contractor and Contractor Related Parties.

- (2) Notwithstanding the full adherence by the Contractor to the provisions of the Conflicts Regime, the Authority reserves the right to exclude the Contractor from participation in any future procurements contemplated in Clause 91.1 (*Conflicts of Interest and Impartiality*) (whether to comply with law, as may be permitted in accordance with the regulations applying to any such future procurements or for any reason to ensure fair competition for such procurements).

Offer and Acceptance

Offer and Acceptance

Contract 712620450 for the Supply of TacSys Resource Partner

This Contract shall come into effect on the date of signature by both Parties.

For and on behalf of the Contractor:

Name and Title	[REDACTED]
Signature	[REDACTED]
Date	13/09/2024

For and on behalf of the Secretary of State for Defence:

Name and Title	[REDACTED]
Signature	[REDACTED]
Date	14/09/2024

Schedule 1 – Definitions of Contract

Articles	means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the Schedule of Requirements, but excluding incidentals outside the Schedule of Requirements such as progress reports;
Authority	means the Secretary of State for Defence acting on behalf of the Crown;
Authority's Representative(s)	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of Condition 7;
Business Day	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
Central Government Body	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
Collect	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause 28.c and Collected and Collection shall be construed accordingly;
Commercial Packaging	means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)
Conditions	means the terms and conditions set out in this document;
Conflicts Regime	Has the meaning set out at Condition 46 u (1) of this document;
Consignee	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in Schedule 3 (Contract Data Sheet) or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
Consignor	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;

Contract	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with Condition 6 (Formal Amendments to the Contract), as may be amended and/or extended from time to time as a result of the commencement of any Active Tasking Order and/or as a result of any Exercised Option;
Contract Price	<p>means the amount set out in the Schedule of Requirements to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract, being the sum of:</p> <ul style="list-style-type: none"> (a) the Core Contractor Deliverables Firm Price (during such period only as the order for the Core Contractor Deliverables is subsisting in accordance with this Contract); plus (b) the Core Contractor Deliverables Fixed Price (during such period only as the order for the Core Contractor Deliverables is subsisting in accordance with this Contract); plus (c) the Option Firm Price for each Exercised Option that is identified in the Schedule of Requirements as having a Firm Price (during such period only as such Exercised Option is subsisting in accordance with this Contract); plus (d) the Option Fixed Price for each Exercised Option (during such period only as such Exercised Option is subsisting in accordance with this Contract, <p>in each case, as adjusted from time to time in accordance with this Contract and which is payable to the Contractor by the Authority under this Contract for the full and proper performance by the Contractor of its obligations under this Contract as determined under the provisions of Schedule 11 (Pricing and Payment) and any other relevant provisions of this Contract;</p>
Contractor	means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
Contractor Deliverables	means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract, including the Core Contractor Deliverables, the Contractor Deliverables relating to all of the Exercised Options and any Additional Contractor Deliverables;
Control	means the power of a person to secure that the affairs of the

Contractor are conducted in accordance with the wishes of that person:

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

and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;

CPET

means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy;

Crown Use

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

Dangerous Goods

means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

- (a) Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);
- (b) European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);
- (c) Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);
- (d) International Maritime Dangerous Goods (IMDG) Code;
- (e) International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;
- (f) International Air Transport Association (IATA) Dangerous Goods Regulations.

DBS Finance

means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);

DEFFORM

means the MOD DEFFORM series which can be found at <https://www.aof.mod.uk>;

DEF STAN

means Defence Standards which can be accessed at <https://www.dstan.mod.uk>;

Deliver

means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with Condition 28 and Delivered and Delivery shall be construed

	accordingly;
Delivery Date	means the date as specified in the Schedule of Requirements on which the Contractor Deliverables or the relevant portion of them are to be Delivered or made available for Collection;
Denomination of Quantity (D of Q)	means the quantity or measure by which an item of material is managed;
Design Right(s)	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
Diversion Order	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
Effective Date of Contract	means 1 August 2024;
Evidence	means either: <ul style="list-style-type: none"> (a) an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or (b) other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;
Firm Price	means the firm prices for the Core Contractor Deliverables, Options and the Price List (excluding VAT), which shall not be subject to adjustment during the Firm Price Period, other than as a result of a change as a result of the commencement of an Active Tasking Order as contemplated in Schedule 12 (Tasking Process) or as a result of an approved Change pursuant to Schedule 4 (Contract Change Control Procedure) and in accordance with Schedule 11 (Pricing and Payment);
FLEGT	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
Government Furnished Assets (GFA)	is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
Hazardous Contractor Deliverable	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
Independent Verification	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to "ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent", and who is accredited to audit against forest management standards by a body whose

	organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”;
Information	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;
Issued Property	means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;
Legal and Sustainable	means production and process methods, also referred to as timber production standards, as defined by the document titled “UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement”. The edition current on the day the Contract documents are issued by the Authority shall apply;
Legislation	means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, or any exercise of Royal Prerogative;
Military Level Packaging (MLP)	means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;
Military Packager Approval Scheme (MPAS)	is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);
Military Packaging Level (MPL)	shall have the meaning described in Def Stan 81-041 (Part 1);
MPAS Registered Organisation	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
MPAS Certificated Designer	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
NATO	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
Notices	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
Overseas	shall mean non UK or foreign;
Packaging	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the

	preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Plastic Packaging Components	shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation;
PPT	means a tax called “plastic packaging tax” charged in accordance with Part 2 of the Finance Act 2021;
PPT Legislation	means the legislative provisions set out in Part 2 and Schedules 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;
Primary Packaging Quantity(PPQ)	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1);
Publishable Performance Information	means any of the Information in Schedule 9 (KPI Data Report) as it relates to Key Performance Indicator where it is expressed as publishable in the table in Schedule 9 which shall not contain any Information which is exempt from disclosure which shall be determined by the Authority; and which shall not constitute Sensitive Information;
Recycled Timber	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: <ul style="list-style-type: none"> (a) pre-consumer reclaimed wood and wood fibre and industrial by-products; (b) post-consumer reclaimed wood and wood fibre, and driftwood; I reclaimed timber abandoned or confiscated at least ten years previously; it excludes sawmill co-products;
Safety Data Sheet	has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);
Schedule of Requirements	means the Schedule of Requirements set out at the beginning of this Contract, which identifies, either directly or by reference, Contractor Deliverables to be provided and the price or pricing terms in relation to each Contractor

	Deliverable;
Sensitive Information	means the Information listed in the completed Schedule 5 (Contractor's Sensitive Information), which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;
Short-Rotation Coppice	means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;
Specification	means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, and shall include any document or item which, individually or collectively is referred to in the Schedule of Requirements. The Specification forms part of the Contract and all Contractor Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification;
STANAG 4329	means the publication NATO Standard Bar Code Symbolologies which can be sourced at https://www.dstan.mod.uk/faqs.html ;
Subcontractor	means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly;
Task Order	means an order issued by the Authority's Project Manager confirming that the Contractor is required to perform the relevant task in accordance with Schedule 12 (Tasking Process);
Timber and Wood-Derived Products	means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;
Transparency Information	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, except for (i) any Information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information;
Virgin Timber	means Timber and Wood-Derived Products that do not include Recycled Timber.

Annex to Schedule 1

Additional Definitions of Contract law. Conditions 45 – (Additional Conditions)

Acceptance	means the satisfaction of the GAR Exit Criteria for the GAR Relevant Deliverable and “ Accept ” and “ Accepted ” shall be construed accordingly;
Active Tasking Order	means a Tasking Order which adjusts the Core Contractor Deliverables or an Exercised Option as approved in accordance with the procedures in Schedule 12 (Tasking Process);
Additional Contractor Deliverables	means the additional, revised and/or reduced services and/or Articles that the Contractor is to perform and which form part of the Contractor Deliverables following the approval of a Tasking Proposal pursuant to Schedule 12 (Tasking Process) or an approved Change in accordance with Schedule 4 (Contract Change Control Procedure);
Annual Performance Report	has the meaning given in paragraph 8 of Schedule 15 (Governance and Management);
Annual Performance Review	has the meaning given in paragraph 8 of Schedule 15 (Governance and Management);
Applicable Deduction	means the relevant deduction identified in the Table at Appendix 1 to Schedule 14 (Incentivisation) being a percentage of the Maximum Deductible Amount;
Assets	has the meaning given in paragraph 2.1.6 of Schedule 17 (Exit Plan);
Assurance and Acceptance Process	means the assurance and acceptance process outlined in Schedule 8 (Assurance and Acceptance Process), as applicable to the relevant Contractor Deliverable;
Authority’s Project Manager	means the person designated as such in the Contract Data;
Authority Change	mean a change initiated by the Authority in accordance with Schedule 4 (Contract Change Control Procedure);
Authority Data	has the meaning given in clause f(1) (Authority Data);
Authority Notice of Change	has the meaning give in paragraph 3 of Schedule 4 (Contract Change Control Procedure);
Authority Sites	means those sites which are in the Authority’s control or were in the Authority’s control immediately prior to the Effective Date of Contract and which are to be used by the Contractor for the purposes of providing the Contractor Deliverables but not including any Other Contractor’s Premises;
Authority System	means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Contract which is owned by the Authority or licensed to it by a Third Party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Contractor Deliverables;

Business Continuity Plan	means the business continuity plan or plans required by item 2.1 of the Statement of Requirements;
Change	means a change which the Authority or the Contractor shall be entitled to propose in accordance with Schedule 4 (Contract Change Control Procedure);
Contract Month	means the period commencing on and including the Effective Date of Contract to the end of the calendar month in which the Effective Date of Contract occurs and thereafter each subsequent calendar month commencing on the first day of each calendar month, provided that the final Contract Month shall be such period as commences on the first day of the Contract Month in which the Expiry Date or the Termination Date (as the case may be) falls and ends on the Expiry Date or Termination Date (as the case may be);
Contract Month n	has the meaning given in paragraph 1.1 of Part 1 of Schedule 11 (Pricing and Payment);
Contract Period	means the period commencing on and from the Effective Date of Contract and ending on the earlier of the Expiry Date and the Termination Date;
Contract Programme	means the programme set out in Schedule 19 (Contract Programme);
Contract Start Up Meeting	means the meeting referred to in paragraph 4 of Schedule 15 (Governance and Management);
Contractor Change	means a change initiated by the Contractor in accordance with Schedule 4 (Contract Change Control Procedure);
Contractor Change Proposal	has the meaning given in paragraph 4 of Schedule 4 (Contract Change Control Procedure);
Contractor Personnel	means the Contractor's employees, agents and employees and agents of the Sub-Contractors;
Contractor Related Party	means: <ul style="list-style-type: none"> (a) an officer, servant, agent or employee of the Contractor or any Affiliate of the Contractor; (b) any Sub-Contractor acting in connection with this Contract; and/or (c) any person on or at: <ul style="list-style-type: none"> (i) any of the Authority Sites or other Government Establishment (as the case may be) at the express or implied invitation of the Contractor (other than an Authority Related Party); and/or (ii) any Other Contractor's Premises at the express or implied invitation of the Contractor, <p>save to the extent such person is acting under the instruction or control of the Authority or such Other Contractor;</p>
Core Contractor Deliverables	means that part of the Contractor Deliverables set out in the Statement of Requirements (SOR) and Appendices 1 to 12 (inclusive) of the Statement of Requirements that the

	Authority requires the Contractor to both perform and complete, in each case prior to the Original Expiry Date, as adjusted following the commencement of any Active Tasking Order relevant to the Core Contractor Deliverables and/or an approved Change pursuant to Schedule 4 (Contract Change Control Procedure);
Core Contractor Deliverables Adjustment Firm Price	means the amount by which the Core Contractor Deliverables Firm Price (current at the relevant time) will be adjusted following commencement of an Active Tasking Order and/or an approved Change which adjusts the Core Contractor Deliverables, as more particularly referred to in paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment);
Core Contractor Deliverables Adjustment Fixed Price	means the amount by which the Core Contractor Deliverables Fixed Price (current at the relevant time) will be adjusted following commencement of an Active Tasking Order and/or an approved Change which adjusts the Core Contractor Deliverables; as more particularly referred to in paragraph 3 of Part 2 of Schedule 11 (Pricing and Payment);
Core Contractor Deliverables Firm Price	means the Firm Price for the relevant part of the Core Contractor Deliverables as described in paragraph 1 of Part 2 of Schedule 11 (Pricing and Payment) and as adjusted as described in paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment) and at the date of this Contract is the sum of [REDACTED] ;
Core Contractor Deliverables Fixed Price	the Fixed Price for the relevant part of the Core Contractor Deliverables, as adjusted as described in paragraphs 1.15 to 1.23 (inclusive) and paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment);
Core Contractor Deliverables Payment	means each payment calculated in accordance with paragraph 1 of Part 1 of Schedule 11 (Pricing and Payment);
Costs	<p>means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Contractor in providing the Contractor Deliverables:</p> <p>(a) the cost to the Contractor (as the context requires), calculated per man day, of engaging the Contractor Personnel, including:</p> <ul style="list-style-type: none"> base salary paid to the Contractor Personnel; employer's national insurance contributions; pension contributions; car allowances; any other contractual employment benefits; staff training; work place accommodation; and

work place IT equipment and tools reasonably necessary to perform the Contractor Deliverables (but not including items included within limb (b) below);

- (b) costs incurred in respect of those assets treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of assets by the Contractor to the Authority or (to the extent that risk and title in any asset is not held by the Contractor) any cost actually incurred by the Contractor in respect of those assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Contractor in the delivery of the Contractor Deliverables; and
- (d) forecast contingency costs;

but excluding:

overhead;

financing or similar costs;

maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Contract Period;

taxation;

finances and penalties; and

non-cash items (including depreciation, amortisation, impairments and movements in provisions);

Controller

has the meaning given in Article 4 of the UK GDPR;

Data Protection Legislation

has the meaning given in clause 46.a(1);

Deduction

means each deduction calculated in accordance with the Authority's right to make Applicable Deductions arising under Schedule 14 (Incentivisation), being a Temporary Deduction or a Permanent Deduction, as the context shall require ;

Default

has the meaning given in clause 46.a(1) (Limitations on Liabilities);

Discretionary GFA

means the provision by the Authority to the Contractor of items and/or information to assist the Contractor in delivery of the Contractor Deliverables as listed in the table at Part 3 (Discretionary GFA) to Schedule 16 (Authority Obligations) (as more particularly referred to in clauses 46.d(8) to (13)

	(Discretionary GFA));
Disputed Amount	has the meaning given in clause 46.m (Disputed Amounts);
Dispute Resolution Procedure	means the procedure for resolving disputes set out in clause 40 (Dispute Resolution);
DPA 2018	has the meaning given in clause 46.a(1);
Employee Liability Information	has the meaning given in paragraph 1 of Part 2 of Schedule 21 (Transfer Regulations);
Employing Sub-Contractor	has the meaning given in paragraph 1 of Part 1 or paragraph 1 of Part 2 of Schedule 21 (Transfer Regulations) as the context requires;
Excess Monthly Payment	has the meaning given in paragraph 1.3 of Part 1 of Schedule 11 (Pricing and Payment);
Exercised Option	means an Option which has been exercised in accordance with the provisions of clause 46.l(1) Contract Period and Options);
Exit Assistance	has the meaning given paragraph 6.5 of Schedule 17 (Exit Plan);
Exit Management	means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Contractor Deliverables from the Contractor to the Authority and/or a Follow-On Contractor as referred to in Clauses 46.q (Exit Plan) and 46.r (Continuing Assistance);
Exit Management Information	means all information which may be relevant on the expiry or early termination of this Contract including any information which may be relevant to the Authority and/or any Follow-On Contractors, including information relating to time schedules, performance measures and staff transfers (and which information shall be updated and increased by the Contractor as it considers necessary and/or as requested by the Authority from time to time);
Exit Manager	means the person appointed by each party for managing the Parties' respective obligations under Schedule 17 (Exit Plan);
Exit Period	means, subject to paragraph 6 of Schedule 17 (Exit Plan), the period commencing six (6) months prior to the Expiry Date and ending on the Expiry Date and/or the period commencing with the service of a Termination Notice and ending on the date that this Contract (or part thereof) will (or may) terminate as the result of the service of such Termination Notice;
Exit Plan	means the plan referred to in Schedule 17 (Exit Plan) as may be developed and/or amended in accordance with Clause 46.q (Exit Plan) and paragraph 4 of Schedule 17 (Exit Plan);
Exit Workshop	means the workshop referred to in paragraph 10 of Schedule 15 (Governance and Management);
Expenses	has the meaning given in paragraph 3.1 of Part 1 of Schedule 11 (Pricing and Payment);
Expiry Date	means 31 July 2027 as such date may be extended in

	accordance with clause 46.l(1) (Contract Period and Options) and clauses 46.l(2) to (46.l(11) (inclusive);
Fail	means, in relation to any of the KPIs, the Contractor has not satisfied the criteria contained within the relevant monitoring methodology set out in the Table at Appendix 1 to Schedule 14 (Incentivisation);
Firm Price Period	means the period commencing on the Effective Date of Contract and expiring on the third anniversary of the Effective Date of Contract;
Fixed Price	means the Firm Prices for the Core Contractor Deliverables, Options and the Price List, which shall be adjusted during the Fixed Price Period in accordance with Schedule 11 (Pricing and Payment);
Fixed Price Period	means the period commencing on the expiry of the Firm Price Period and ending on the Expiry Date or the Termination Date (whichever is the earlier);
Follow-On Contractor	has the meaning given in clause 46.r(1);
GAR Entry Criteria	means the criteria specified in paragraph 1 of Part 2 of Schedule 8 (Assurance and Acceptance Process) applicable to the Review in question;
GAR Exit Criteria	means the criteria specified in paragraph 2 of Part 2 of Schedule 8 (Assurance and Acceptance Process) applicable to the Review in question;
GAR Final Form	is when the Authority considers a GAR Relevant Deliverable satisfies the Statement of Requirements and/or other Authority requirements in respect of such Contractor Deliverable and does not require the Contractor to carry out any additional work in respect of such GAR Relevant Deliverable;
GAR Relevant Deliverable	has the meaning given in paragraph 1.3.1 of Part 1 of Schedule 8 (Assurance and Acceptance Process);
GAR Review	means a review by the Authority of a Programmed Contractor Deliverable or an Unprogrammed Contractor Deliverable in accordance with Schedule 8 (Assurance and Acceptance Process);
GAR Review Date	means, subject to paragraphs 1.5 and 1.9 to 1.11 of Schedule 8 (Assurance and Acceptance Process): <ul style="list-style-type: none"> (a) in respect of a Programmed Contractor Deliverable the last date of the relevant Review Period as identified in the Contract Programme; and (b) in respect of an Unprogrammed Contractor Deliverable the date notified by the Authority to the Contractor in accordance with paragraph 1.2.2 of Schedule 8 (Assurance and Acceptance Process);
GAR Review Period	means, subject to paragraphs 1.5 and 1.9 to 1.11 of Schedule 8 (Assurance and Acceptance Process), the period for review of the GAR Relevant Deliverable applicable to the Review in question, being the period commencing on the

	date the GAR Entry Criteria for the relevant review have been satisfied;
GAR Submission Date	means, subject to paragraphs 1.5 and 1.9 to 1.11 of Schedule 8 (Assurance and Acceptance Process): <ul style="list-style-type: none"> (a) in respect of a Programmed Contractor Deliverable, the programmed date for the relevant GAR Review Period to commence, on or before which the relevant GAR Entry Criteria is to be satisfied, as identified in the Contract Programme; and (b) in respect of an Unprogrammed Contractor Deliverable, the programmed date for the relevant GAR Review Period to commence as notified by the Authority to the Contractor in accordance with paragraph 1.3.1 of Schedule 8 (Assurance and Acceptance Process);
GAR Subsequent Review	has the meaning given in paragraph 1.10 of Part 1 of Schedule 8 (Assurance and Acceptance Process);
General Assurance Review (GAR)	has the meaning given in paragraph 1.1.1 of Part 1 of Schedule 8 (Assurance and Acceptance Process);
GFA	means the obligations of the authority as set out in Schedule 16 (Authority Obligations);
GFA Failure	means the failure of the Authority to provide GFA (other than Discretionary GFA) as set out in Schedule 16 (Authority Obligations);
GFA Working Day	means Monday to Friday and excluding bank holidays;
Good Industry Practice	means that degree of skill, care, prudence and foresight and operating practice, which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor engaged in the same type of undertaking as that of the Contractor and/or any Sub-Contractor under the same or similar circumstances;
ITAR	means the USA International Traffic in Arms Regulations;
Joint Project Office or JPO	is the Authority led vehicle for the joint delivery and co-ordination of LE TacCIS;
JPO Facility	means the facility within which the JPO is located from time to time;
Joint Relationship Management Plan	means the plan referred to in the Contract Transition Requirements SOR, Serial 2.6;
Key Date	means the date upon which the whole or any part (as the case may be) of a Contractor Deliverable is to be provided to the Authority subject to clause 46.c(4)(b);
Key Performance Indicator or KPI	means the criteria against which the Contractor's performance of its obligations under this Contract is measured and which are set out in Appendix 1 to Schedule 14 (Incentivisation);
Key Personnel	means those persons appointed by the Contractor to fulfil the Key Roles, being the persons listed in:

	<p>(a) Schedule 20 (Key Personnel) against each Key Role as at the Effective Date of Contract or as amended from time to time in accordance with clauses 46.h(5) to 46.h(7) (Key Personnel) (inclusive); or</p> <p>(b) the relevant Tasking Proposal or as amended from time to time in accordance with clauses 46.h(5) to 46.h(7) (Key Personnel) (inclusive);</p>
Key Role	mean a role listed in the second column of the Table in Schedule 20 (Key Personnel) or identified in any Active Task Order and any additional roles added from time to time in accordance with clause 46.h(5) (Key Personnel);
KPI Report	the report to be created by the Contractor pursuant to and in accordance with paragraph 3 of Schedule 14 (Incentivisation);
KPI Trends	means the general direction against which KPIs are being measured over a Quarter;
Law	has the meaning given in clause 46.a(1);
LE TacCIS	<p>means the transformational change programme that will 'information-enable' the Land Environment (LE) in the full conduct of operations:</p> <ul style="list-style-type: none"> it is a collection of projects brought together to provide more than the sum of the parts; it will deliver improved tactical Information and communication services, integrated across Joint and Allied Force elements, including interoperability with NATO and Combined, Joint, Intergovernmental, Interagency, Multinational (CJIIIM) partners;
Losses	means all damage, losses, liabilities, claims, actions, costs, expenses (including legal expenses on a standard basis), proceedings, demands and charges whether arising under statute, contract or at common law (and " Loss " or " loss " shall have the same meaning as " Losses ");
Malicious Software	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
Maximum Deductible Amount	means ten per cent (10%) of the Core Contractor Deliverables Payment and the Option Payment for the Contract Month n in which the KPI Failure occurs;
Milestones	means the milestones in relation to the Core Contractor Deliverables and in relation to Exercised Options as set out in Appendix 1 and 2 respectively to Schedule 11 (Pricing and Payment);
Milestone Payment Amount	means, in respect of the Core Contractor Deliverables, each Active Tasking Order and each Exercised Option, the amount

	set out in the relevant column of the applicable Milestone Payments Schedule;
Milestone Payments Schedule	means, in respect of: <ul style="list-style-type: none"> (a) the Core Contractor Deliverables, the schedule referred to in Appendix 1 of Schedule 11 (Pricing and Payment), as adjusted in accordance with Schedule 11 (Pricing and Payment) to take account of each Active Tasking Order applicable to the Core Contractor Deliverables and/or an approved Change pursuant to Schedule 4 (Contract Change Control Procedure); or (b) each Exercised Option, the schedule referred to in Appendix 2 of Schedule 11 (Pricing and Payment), as adjusted in accordance with Schedule 11 (Pricing and Payment) and/or to take account of each Active Tasking Order applicable to that Exercised Option and/or an approved Change pursuant to Schedule 4 (Contract Change Control Procedure);
Monitoring Period	means in respect of KPI 1 to KPI 4 (inclusive), each Contract Month and in respect of KPI 5 the three (3) Contract Month period ending with each Quarter Month (as the case may be);
Monthly Dashboard Report	means the report to be produced in accordance with paragraph 6.9.2(i) of Schedule 15 (Governance and Management);
Monthly Payment	means the amount calculated in accordance with paragraph 1.1 of Part 1 of Schedule 11 (Pricing and Payment);
Monthly Performance Report	means the report referred to in paragraph 6.9 of Schedule 15 (Governance and Management);
Monthly Performance Review	means the review referred to in paragraph 6 of Schedule 15 (Governance and Management);
MTRC	means MORPHEUS Test and Reference Centre;
New Provider	has the meaning given in paragraph 1 of Part 1 of Schedule 21 (Transfer Regulations);
Open Book Data	means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify that part of the Contract Price already paid or payable and that part of the Contract Price forecast to be paid during the remainder of the Contract Period, including details and all assumptions relating to: <ul style="list-style-type: none"> (a) the Costs broken down against each Contractor Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; (b) operating expenditure relating to the provision of the Contractor Deliverables including an analysis showing: <ul style="list-style-type: none"> (i) the unit costs and quantity of consumables and bought-in services; (ii) manpower resources broken down into the number and grade/role of all Contractor

	Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
	(iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor's profit margin; and
	(iv) permitted reimbursable Expenses;
	(c) overheads;
	(d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Contractor Deliverables;
	(e) the Contractor profit achieved over the Contract Period and on an annual basis;
	(f) confirmation that all methods of Cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor;
	(g) an explanation of the type and value of risk and contingencies associated with the provision of the Contractor Deliverables, including the amount of money attributed to each risk and/or contingency; and
	(h) the actual Costs profile for each Contract Period;
Option	means Option 1, Option 2 and each Option in respect of SOR Appendix 13 to SOR Appendix 34 (inclusive) set out or referred to in the Schedule of Requirements and in clause 46.I (Contract Period and Options);
Option 1	means the option to extend the Contract Period for one (1) Year to take effect in Year 4;
Option 2	means the option to extend the Contract Period for one (1) Year to take effect in Year 5;
Option Adjustment Firm Price	means the amount by which the Option Firm Price (current at the relevant time) will be adjusted following commencement of an Active Task Order and/or an approved Change which adjusts the relevant Exercised Option as calculated in accordance with paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment);
Option Adjustment Fixed Price	means the amount by which the Option Fixed Price (current at the relevant time) will be adjusted following commencement of an Active Tasking Order and/or an approved Change which adjusts the relevant Exercised Option, as calculated in accordance with paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment);
Option Costed Year	means any Option set out in the Schedule of Requirements against which the relevant Option Firm Price is shown as being costed in Year 1 and/or Year 2 as the case may be
Option Firm Price	means:

- (a) in respect of Option 1 and/or Option 2, the Core Contractor Deliverables Firm Price at Year 1 as set out in the Schedule of Requirements; and
- (b) in respect of each of SOR Appendix 13 Option to SOR Appendix 34 Option Option, the Firm Price for the whole or the relevant part (as the case may be) of each such Option (as at the Effective Date of Contract as set out in the Schedule of Requirements),

each as adjusted in accordance with the provisions of Schedule 4 (Contract Change Control Procedure), Schedule 12 (Tasking Process) and/or paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment) (as the case may be);

Option Fixed Price

means the Fixed Price for the whole or the relevant part (as the case may be) of each such Option, as adjusted in accordance with the provisions of Schedule 4 (Contract Change Control procedure), Schedule 12 (Tasking Process) and/or paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment) (as the case may be);

[REDACTED]

[REDACTED]

Option Notice

has the meaning given in clause 46.I (Contract Period and Options);

Option Payment

means that part of the Option Firm Price and/or the Option Fixed Price, as the context requires, in respect of all Exercised Options for which an Option Firm Price and/or an Option Fixed Price is due (whether in whole or in part) in Contract Month n;

Option Price

means an Option Firm Price or an Option Fixed Price, as the context requires;

Original Expiry Date

means the Expiry Date as at the Effective Date of Contract (and prior to any extension in accordance with clause 46.I(1) (Contract Period and Options) and clauses 46.I(2) to (46.I(11) (inclusive)

Other Contractor

means any contractor to the Authority (other than the Contractor) or any other Third Party which is notified to the Contractor from time to time and/or of which the Contractor ought reasonably to have been aware;

Other Contractor's Premises

means any premises which are in the control of any Other Contractor and at which the Contractor and/or any Contractor Related Party is required to attend (whether or not at the invitation of the Authority) in connection with the performance of this Contract and/or the provision of the Contractor Deliverables but excluding any Authority Site and/or the

Contractor's Premises;

Permanent Deduction	means the permanent deductions referred to in paragraph 5.6 of Schedule 14 (Incentivisation);
Persistent Breach	<p>means three (3) or more breaches (the "Subsequent Breaches") by the Contractor of one of its obligations under this Contract, provided:</p> <ul style="list-style-type: none"> (a) that the Authority has previously served on the Contractor a notice ("Warning Notice") correctly stating that the Contractor has, in any Contract Months prior to the service of such Warning Notice, breached such obligation under this Contract on one (1) or more occasions; (b) that the Contractor's Subsequent Breaches of such obligation take place during the eighteen (18) month period following the service of such Warning Notice; and (c) no service of a Warning Notice may be based on any breaches of such obligation that have already been the subject of a Warning Notice, <p>provided that Persistent Breach will not include breaches in respect of which the Authority shall be entitled to terminate this Contract pursuant to Schedule 14 (Incentivisation);</p>
Personal Data	has the meaning given in DEFCON 532A (Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority));
Prescribed Rate	means two percent (2%) above the base rate from time to time of the Bank of England;
Previous Contractor	has the meaning given in paragraph 1 of Part 1 of Schedule 21 (Transfer Regulations);
Previous Contractor Employee	has the meaning given in paragraph 1 of Part 1 of Schedule 21 (Transfer Regulations);
Price List	means the price list set out in Appendix 3 to Schedule 11 (Pricing and Payment) or as amended from time to time in accordance with Part 2 of Schedule 11 (Pricing and Payment);
Programmed Contractor Deliverables	are items or documents which are identified in the Appendix to Schedule 8 (Assurance and Acceptance Process) on the Effective Date of Contract and/or following the approval of a Tasking Proposal or a Change pursuant to Schedule 4 (Contract Change Control Procedure) for which there is a GAR Review Date and GAR Submission Date (in each case set out in the Contract Programme);
Proposed Additional Contractor Deliverables	means the Additional Contractor Deliverables that the Authority is requesting the Contractor to perform at the

	relevant time in relation to the Core Contractor Deliverables and/or Exercised Options;
Quarter	means the Contract Month which is the third (3 rd) Contract Month after the Effective Date of Contract and each three (3) month anniversary of such Contract Month and “ Quarterly ” shall be construed accordingly;
Quarterly Performance Review	means the review referred to in paragraph 7 of Schedule 15 (Governance and Management);
Recovery Plan	is the recovery plan referred to in paragraph 4 of Schedule 14 (Incentivisation);
Rectification Plan	means a plan to address a Default identified following an audit conducted in accordance with Schedule 22 (Outcomes and Open Book Data and Audit Reports);
Relevant Transfer	has the meaning given in paragraph 1 of Part 1 of Schedule 21 (Transfer Regulations);
Relevant Transfer Date	has the meaning given in paragraph 1 of Part 1 of Schedule 21 (Transfer Regulations);
Relevant Statutory Scheme	has the meaning given in paragraph 1 of Part 1 of Schedule 21 (Transfer Regulations);
Required Insurances	has the meaning given in clause 46.i (Insurances);
Risk Report	means the report to be produced in accordance with paragraph 6.9.2(ii) of Schedule 15 (Governance and Management);
Security Aspects Letter	means the letter relating to the designation of security classifications in the form set out at Appendix 1 to Schedule 23 (Security Conditions);
Security Policy	means the HMG Security policy Framework relating to the Government Security Classification Policy as published by the Cabinet Office;
Serviceman	means military manpower (and “ Servicemen ” shall be construed accordingly);
Services	has the meaning given in paragraph 1 of Part 1 of Schedule 21 (Transfer Regulations);
Social Value	are the values set out in the Social Value Model;
Social Value KPIs	means KPI 5 as referred to in paragraph 1.4 of Schedule 14 (incentivisation) and set out in the Table at Appendix 1 of Schedule 14;
Social Value Model	is the social value model that sets out the UK Government’s social value priorities to ensure that any public body procurement considers how it might improve economic, social and environmental wellbeing;
Statement of Requirements (or “SOR”)	means Schedule 2 (Statement of Requirements) as amended from time to time in accordance with this Contract;
Sub-Contractor	means any sub-contractor to the Contractor under this Contract, a sub-contractor of a sub-contractor to the Contractor and any other sub-contractor (of whatever tier)

	engaged by the Contractor or any sub-contractor from time to time as may be permitted by this Contract to provide the Contractor Deliverables (or any part of the Contractor Deliverables);
Sub-Contracts	means the contracts entered into between the Contractor and the Sub-Contractors and the contracts entered into between any Sub-Contractor and any other Sub-Contractor in respect of the provision of the Contractor Deliverables and “Sub-Contracting” shall be construed accordingly;
Subsequent Relevant Transfer	has the meaning given in paragraph 1 of Part 2 of Schedule 21 (Transfer Regulations);
Subsequent Transfer Date	has the meaning given in paragraph 1 of Part 2 of Schedule 21 (Transfer Regulations);
Subsequent Transferring Employee	has the meaning given in paragraph 1 of Part 2 of Schedule 21 (Transfer Regulations);
Tasking Order	means the order for undertaking a tasking activity in accordance with the procedures set out in Schedule 12 (Tasking Process);
Tasking Proposal	means the Contractor’s firm price proposal being on Tasking Form Part 2 – Firm Price Quotation (as set out in Schedule 12 (Tasking Process)) in response to the Authority’s request for a tasking activity in accordance with the procedures set out in Schedule 12 (Tasking Process);
Temporary Deduction	means the temporary deductions referred to in paragraph 5.3 of Schedule 14 (Incentivisation);
Termination Date	means the date of any early termination of the whole or part of this Contract pursuant to its terms;
Termination Notice	means any notice to terminate this Contract pursuant to its terms;
Third Party	any person other than the Parties;
Transfer Regulations	has the meaning given in paragraph 1 of Part 1 and paragraph 1 of Part 2 of Schedule 21 (Transfer Regulations);
Transferring Contracts	has the meaning given in paragraph 8.2.3 of Schedule 17 (Exit Plan);
TRINITY	means the Wide Area Network (WAN) for the deployed land environment, delivering high assurance connectivity services at the tactical and operational levels of command, whether operating as a single nation or part of a wider coalition, within the defence single information environment;
TRP Ad Hoc Project Meeting	means the meeting referred to in paragraph 11 of Schedule 15 (Governance and Management);
TRP Monthly Meeting	means the meeting referred to in paragraph 6 of Schedule 15 (Governance and Management);
TRP Project Manager	means the person nominated by the Authority as the project manager for this Contract as at the Effective Date of Contract (or any replacement project manager as may be notified to

	the Contractor from time to time);
TRP Weekly Meeting	means the meeting referred to in paragraph 5 of Schedule 15 (Governance and Management);
TRP Weekly Report	means the report referred to in paragraph 5.7 of Schedule 15 (Governance and Management);
UK GDPR	has the meaning given in clause 46.a(1);
Unexpected Subsequent Transferring Employees	has the meaning given in paragraph 2.3.1 of Part 1 of Schedule 21 (Transfer Regulations);
Unit Rate	means the agreed maximum rates (as may be amended from time to time in accordance with paragraphs 2, 3 and 4 of Part 2 of Schedule 11 (Pricing and Payment)) as set out in the Price List, which are used to calculate the Core Contractor Deliverables Firm Price, the Core Contractor Deliverables Fixed Price, the Option Firm Price, the Option Fixed Price, the Core Contractor Deliverables Adjustment Firm Price, the Core Contractor Deliverables Adjustment Fixed Price, the Option Adjustment Firm Price and the Option Adjustment Fixed Price in respect of the Contractor Deliverables and Proposed Additional Contractor Deliverables (in accordance with paragraph 2 of Part 2 of Schedule 11 (Pricing and Payment));
Unprogrammed Contractor Deliverables	are items or documents which are referred to in paragraph 1.2.2 of Part 1 of Schedule 8 (Assurance and Acceptance Process);
Warning Notice	has the meaning given in limb (a) of the definition of Persistent Breach;
Year	means the twelve (12) month period from and including the day falling immediately before the day bearing the same number in the same month of the following year (or, in the case of a period commencing on 29 February, ending on the next following 28 February).
Year 1	means 14 August 2024 to 13 August 2025;
Year 2	means 14 August 2025 to 13 August 2026;
Year 3	means 14 August 2026to 13 August 2027;
Year 4	Means 14 August 2027to 13 August 2028;
Year 5	means 14 August 2028 to 13 August 2029.