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THE SECRETARY OF STATE FOR DEFENCE
and
JACOBS UK LIMITED
and
TURNER and TOWNSEND PROJECT MANAGEMENT LIMITED

together in an unincorporated joint venture

EQUINOX

**THE PROJECT DELIVERY PARTNER -
SUCCESSOR**

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THIS PROJECT DELIVERY PARTNER AGREEMENT is made on 20th December 2023

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the "**Authority**"); and
- (2) the "**Supplier**", being an unincorporated joint venture comprising:
 - a. **JACOBS UK LIMITED** a company incorporated in England (company registered number 2594504) whose registered office is at Cottons Centre, Cottons Lane, London, United Kingdom, SE1 2QG;

and
 - b. **TURNER AND TOWNSEND PROJECT MANAGEMENT LIMITED** a company incorporated in England (company registered number 02165592) whose registered office is at Low Hall Calverley Lane, Horsforth, Leeds, West Yorkshire, LS18 4GH.

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IT IS AGREED:

PART I – CORE CLAUSES

1. DEFINITIONS AND INTERPRETATIONS

1.1 DEFINITIONS

In this Agreement (including the Recitals, Schedules, Appendices and Annexes) the following terms shall, unless the context otherwise requires, have the meanings ascribed in Schedule A (Definitions).

1.2 INTERPRETATION

In this Agreement, except where the context otherwise requires:

- 1.2.1 Words and expressions defined in the Companies Act 2006 shall have the same meaning in this Agreement;
- 1.2.2 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision;
- 1.2.3 a reference to an enactment, statutory provision or subordinate legislation shall include a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced, and references to an enactment or statutory provision include a reference to any repealed statute or statutory provision which it re-enacts (with or without modification), as subsequently re-enacted;
- 1.2.4 words in the singular shall include the plural and vice versa;
- 1.2.5 references to one gender include other genders;
- 1.2.6 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership and to an individual's executors or administrators;
- 1.2.7 a reference to a Clause, Paragraph, Schedule, Part, Rule, Appendix or Annex shall be a reference to a Clause, Paragraph, Schedule, Part, Rule, Appendix or Annex of or to this Agreement and a reference to a Paragraph or Part within a Schedule, Appendix or Annex shall be to a Paragraph or Part of that particular Schedule, Appendix or Annex unless otherwise stated;
- 1.2.8 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms;

- 1.2.9 references in this Agreement to any contract, agreement or other instrument (other than an enactment, statutory provision or subordinate legislation made thereunder) shall be deemed to be references to that contract, agreement or instrument as from time to time amended;
- 1.2.10 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.11 references to writing shall include any modes of reproducing words in any legible form and (unless expressly stated otherwise) shall include email;
- 1.2.12 references to the Authority or the Supplier shall include any assignees or successors in title to those persons;
- 1.2.13 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.2.14 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.2.15 reference to a document "in the agreed terms" or any similar expression shall be to a document agreed between the Parties, annexed or appended to this Agreement and initialled for identification by the Parties; and
- 1.2.16 except to the extent expressly provided, no rates or amounts expressed in this Agreement shall be subject to indexation during the Term.

1.3 PRECEDENCE OF DOCUMENTATION

- 1.3.1 Subject to Clause 1.3.2, if there is any inconsistency between the provisions of the body of this Agreement and the Schedules or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:
- A. The Clauses of this Agreement
 - B. Clause 1 (Definitions and Interpretations) to Clause 79 (Plastic Packaging Tax of this Agreement);
 - C. Schedule B (Requirements);
 - D. all other Schedules; and
 - E. any Approved Tasking Order;
 - F. any other document referred to in any of the above.
- 1.3.2 The terms of any Approved Tasking Order will take precedence over any other part of this Agreement in so far as such terms relate to the delivery of the Services under that Approved Tasking Order (as the case may be).
- 1.3.3 If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 1.3.1, such Party shall promptly notify the

other and the Parties will seek to resolve such inconsistency, provided that if either Party considers the inconsistency to be material then the matter shall be determined in accordance with Clause 57 (Dispute Resolution Procedure).

2. GOVERNING LAW

- 2.1 The Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 2.2 Subject to Clause 57 (Dispute Resolution Procedure) and without prejudice to the dispute resolution process set out in that Clause, each party hereby irrevocably 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 Agreement or breach thereof.
- 2.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause and for the enforcement of any judgement, order or award given under English jurisdiction.

3. COMMENCEMENT

3.1 Agreement Commencement Date

- 3.1.1 This agreement shall come into effect when both parties, the Supplier and the Authority have signed.

3.2 Commencement Conditions

- 3.2.1 Prior to the Commencement Conditions Longstop Date, the Supplier shall deliver to the ADT Commercial Lead:
- (A) a certified copy of the joint venture agreement between the parties comprising the Supplier;
 - (B) signed copies of a Letter of Placement executed by each of the Key Personnel;
 - (C) a list of Sub-contracts entered into in accordance with Schedule D (Supply Chain Management);
 - (D) a Compliance Agreement executed by each Sub-contractor listed in Schedule D (Supply Chain Management) (which may be included in the terms of the Sub-contract);
 - (E) evidence reasonably satisfactory to the Authority that the Supplier has taken out each policy of insurance required under Part XIII (Insurance and Liabilities),

(the "**Commencement Conditions**").

- 3.2.2 The Supplier shall use all reasonable endeavours to satisfy or procure the satisfaction of each of the Commencement Conditions not already satisfied or waived as soon as possible.
- 3.2.3 The Authority may, by written notice to the Supplier, waive any of the Commencement Conditions in whole or in part.
- 3.2.4 The Supplier will comply with the Transition Plan requirements as agreed in accordance with Schedule B (Requirements).

3.3 **Failure to Satisfy Commencement Conditions**

- 3.3.1 If one or more of the Commencement Conditions remains unsatisfied by 23:59 on the day falling immediately before the Commencement Conditions Longstop Date, and has not been waived by the Authority on or before that date, the Authority shall be entitled to terminate this Agreement with immediate effect as a Supplier Event of Default.

3.4 **Contracted Work**

- 3.4.1 Tasking will start from 4th March 2024 to allow for a transition period from commencement date to the Contracted work date.

4. **DURATION OF THE AGREEMENT**

4.1 **Term**

- 4.1.1 Subject to the earlier termination of this Agreement in accordance with Clause 52 (Early Termination) or extension of this Agreement in accordance with Clause 4.2 (Options), this Agreement shall commence on the Commencement Date and expire on the Expiry Date (the "**Term**").

4.2 **Options**

- 4.2.1 The Authority may extend the Term for a period of one (1) year from the Expiry Date and for a further one (1) year following such initial extension.
- 4.2.2 Any decision to extend the Term is a matter solely for the Authority and the Authority's decision in this matter will be final, it being agreed that the Authority has no obligation to exercise such options.
- 4.2.3 The Supplier hereby grants to the Authority the following irrevocable options in accordance with the terms and conditions set out in this Agreement or any

such subsequent Agreement or Agreements where such options are taken up. The terms of this Agreement will apply to any exercisable option period.

- (A) Option Period 1: Year 6–
- (B) Option Period 2: Year 7–

- 4.3 The Authority may propose to extend the Term in accordance with this Clause 4.2 (Options) by notice to the Supplier in writing no later than six (6) Months prior to the date on which the Term would otherwise expire.

5. APPOINTMENT AND LIABILITY

5.1 Appointment

5.1.1 The Supplier shall perform its obligations in accordance with the terms of this Agreement. The entities comprising the Supplier shall be jointly and severally liable for their obligations under this Agreement.

6. NON-EXCLUSIVE AGREEMENT

- 6.1 The Supplier acknowledges and agrees that in entering into this Agreement no form of exclusivity or volume guarantee has been granted by the Authority for the Services and that the Authority is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same or similar to the Services.

- 6.2 In consideration of the payment of the sum of £1 (one pound) by the Authority to the Supplier (receipt of which the Supplier hereby acknowledges), the Supplier shall agree to provide the Services as and when requested by the Authority in accordance with the Approved Tasking Order processes set out in Schedule B (Requirements), Annex G (Tasking principles).

- 6.3 The fulfilment of an Approved Tasking Order may take place after the end of the Term of the Agreement in accordance with any specific terms in the Approved Tasking Order.

- 6.4 The Authority shall pay the Fees for the provision of the Services in accordance with Schedule E (Payment and Performance Management).

6.5 Demand Levels

6.5.1 Where applicable, the demand referred to in the Schedule B (Requirements) are estimates only and is subject to variation at the Authority's discretion. The Authority shall not be bound to accept or pay for any Supplier deliverables other than those stated in the Approved Tasking Order.

7. TRANSPARENCY

- 7.1 Notwithstanding any other term of the Agreement, the Supplier understands that the Authority may publish the Publishable Performance Information and the Transparency Information to the general public.
- 7.2 Subject to clause 7.3, 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.
- 7.3 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.
- 7.4 The Supplier 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 Annex A (Publishable Performance Information) to Schedule G (Supplier's Commercially Sensitive Information). Where the Authority publishes Transparency Information, it shall:
- 7.4.1 before publishing, redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA and/or the EIR, for the avoidance of doubt, including Commercially Sensitive Information;
- 7.4.2 taking into account the Commercially Sensitive Information set out in Schedule G (Supplier's Commercially Sensitive Information) DEFFORM 539A, consult with the Supplier where the Authority intends to publish information which has been identified as Commercially 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
- 7.4.3 present information in a format that assists the general public in understanding the relevance and completeness of the information being

published to ensure the public obtain a fair view on how the Agreement is being performed.

7.5 For the avoidance of doubt, nothing in this Clause shall affect the Supplier's rights at law.

8. CHANGE OF CONTROL OF THE SUPPLIER AND CHANGE IN COI ASSOCIATES

8.1 The Supplier shall inform the Authority, as soon as practicable, in writing (which for this purpose does not include email) of any change in control of any entity comprised in the Supplier Group or if any person holds or acquires, directly or indirectly, at least 20% of the capital or voting rights in any entity comprised in the Supplier Group.

8.2 For the purposes of this Clause 8 (Change of Control of the Supplier and Change in COI Associates), "control" of an entity means the power of a person, directly or indirectly, to secure that the affairs of that entity are conducted in accordance with the wishes of that person or to exercise a dominant influence over that entity:

8.2.1 by means of the holding of shares, or the possession of voting powers in, or in relation to, the entity; or

8.2.2 by virtue of any powers conferred by the constitutional or corporate documents, or any other contract, agreement or arrangement, regulating the entity, and a change of control of the entity occurs if a person who controls the entity ceases to do so or if another person acquires control of the entity.

8.3 The Supplier shall inform the Authority, as soon as practicable, in writing (which for this purpose does not include email) if any entity that is party to (or is competing for or proposing to enter into) any other contract with the Authority, becomes a COI Associate.

8.4 All notices required to be given to the Authority pursuant to this Clause 8 (Change of Control of the Supplier and Change in COI Associates) shall be submitted to the ADT Commercial Lead and to:

Strategic Supplier Management Team

Spruce 3 #1301

MOD Abbey Wood

Bristol

BS34 8JH

DefComrcISSM-MergersandAcq@mod.gov.uk

9. SUPPLIER WARRANTIES AND REPRESENTATIONS

9.1 Supplier Warranties and Representations

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

- (A) any of the entities comprised in the Supplier is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (B) in the case of this Agreement, and each Associated Contract that is executed before or on the date of this Agreement, all action necessary on the part of each entity comprised in the Supplier to authorise the execution of and the performance of its obligations under this Agreement, and any such Associated Contract has been taken;
- (C) in the case of this Agreement, and each Associated Contract (or other document) referred to in Paragraph (B) above, the obligations expressed to be assumed by the Supplier are legal, valid, binding and enforceable to the extent permitted by Applicable Law;
- (D) the execution, delivery and performance by it of the Agreement, and the Associated Contracts, does not contravene any provision of:
 - 1. any Applicable Laws (including any Applicable Law which has been enacted but is not yet in force);
 - 2. the memorandum and articles of association of any entity comprised in the Supplier;
 - 3. any order or decree of any Relevant Authority which is binding on either entity comprised in the Supplier; or
 - 4. any obligation which is binding upon either entity comprised in the Supplier or upon any of its assets or revenues;
- (E) no claim is presently being assessed and no Legal Proceeding is presently in progress or, to the best of the knowledge of any entity comprised in the Supplier (having made all due enquiry), pending or threatened against it or any of its assets which may have a material adverse effect on the ability of the Supplier to perform its obligations under the Agreement;
- (F) no Legal Proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Supplier, having made all due enquiries, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues in relation to either entity comprised in the Supplier;

- (G) neither entity comprised in the Supplier has committed any Prohibited Act in connection with this Agreement or the Competition;
- (H) in so far as it is aware, none of the Supplier Related Parties has committed a Prohibited Act in connection with this Agreement or the Competition;
- (I) (to the best of the knowledge of the Supplier, having made all due enquiries) none of the entities comprised in the Supplier, the Supplier Related Parties or any of the COI Associates is or has been the subject of any investigation, inquiry or enforcement proceedings by any Relevant Authority regarding any offence or alleged offence under any legislation relating to anti-bribery and anti-corruption (including the Bribery Act 2010);
- (J) (to the best of the knowledge of the Supplier, having made all due enquiries) none of the entities comprised in the Supplier, the Supplier Related Parties or any of the COI Associates is or has been the subject of UK or foreign export control sanctions or investigations; and
- (K) the Supplier's Warranted Data is true, accurate and complete in all material respects.

9.1.2 The Supplier warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that at the time of the execution of any Associated Contract that is executed after the date of this Agreement:

- (A) all action necessary on the part of the entities comprised in the Supplier to authorise the execution of and the performance of its obligations under any such Associated Contract will be or has been taken; and
- (B) the obligations expressed to be assumed by the Supplier under any such Associated Contract shall be or are legal, valid, binding and enforceable to the extent permitted by Applicable Law.

9.1.3 The Supplier warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that throughout the duration of this Agreement it will have in place adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Supplier (including Supplier Related Parties) from bribing any person with the intention of obtaining or retaining business for the Supplier, or with the intention of obtaining or retaining an advantage in the conduct of business for the Supplier.

10. SUPPLIER'S RELATED PARTIES

10.1 The Supplier shall at all times remain directly liable to the Authority for the due and proper performance of its obligations under this Agreement and shall be responsible

and liable for the acts and omissions of the Supplier Related Parties in relation to this Agreement and the Services as if they were the acts and omissions of the Supplier.

- 10.2 Without limitation in respect of its actual knowledge, the Supplier shall for all purposes of this Agreement be deemed to have such knowledge in respect of the Services and other obligations under this Agreement and the Associated Contracts as is held (or ought reasonably to be held) by any Supplier Related Party.

11. AUTHORITY RELATED PARTIES

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

12. NOTICES

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

12.1.1 must be in writing in the English language;

12.1.2 when sent by post or left at an address, must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted to or from a place outside the UK) to the address of the addressee which is specified in this Clause 12 (Notices) in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 12 (Notices); or

12.1.3 may be sent by electronic mail to the email address of the addressee which is specified in this Clause 12 (Notices) in relation to the Party to whom the notice is addressed, or to such other address as the relevant Party may from time to time specify by notice given in accordance with this Clause 12 (Notices); unless a provision of this Agreement expressly provides otherwise.

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

Authority:

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

Attention (ADT Commercial Lead):

Save for notices issued by the Supplier to the Authority under Clause 8.4 (Change of Control of the Supplier and Change in COI Associates) which must be sent in accordance with Clause 8.4

Supplier: **Equinox**

Save that notices issued by the Authority to the Supplier under Clause 15 (Assignment and Novation), Clause 52.8 (Voluntary Termination by the Authority), Clause 52.9 (Termination for Change of Control of Supplier), Clause 77.10 (Notice of a Claim) and any Final Performance Warning Notice, Material Breach Notice, Termination Notice, or any notice in respect of a Dispute, each of which may not be validly served by email.

- 12.3 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 12.4.
- 12.4 Subject to Clause 12.5 below, a notice is deemed to be received:
- 12.4.1 in the case of a notice left at the address of the addressee, upon delivery at that address;
- 12.4.2 in the case of a posted letter, on the third (3rd) Business Day after posting or, if posted to or from a place outside the UK, the fifth (5th) Business Day after posting; and
- 12.4.3 in the case of email, when sent (except that an email shall not be deemed to have been sent if the sender receives a delivery failure notification).
- 12.5 A notice received or deemed to be received in accordance with Clause 12.4 on a day which is not a Business Day, or after 1700 on any Business Day, shall be deemed to be received on the next following Business Day.

13. REPRESENTATIVES

13.1 Supplier's Representative

13.1.1 The Supplier shall appoint the person whose name, address, email address and telephone number is set out in Clause 12 (Notices) to act as the Supplier's Representative in connection with this Agreement.

13.2 Authority of the Supplier's Representative

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

13.2.2 The Supplier shall procure that the Supplier's Representative acts in accordance with the Supplier's Representative's powers and functions in this Agreement.

13.3 Change in Supplier's Representative

13.3.1 The Supplier may propose a change in the identity of the Supplier's Representative and Clause 12 (Notices) shall be updated accordingly unless the Authority refuses the change under Clause 13.3.2

13.3.2 The Authority may refuse any change proposed by the Supplier under Clause 13.3.1 in its sole discretion.

13.3.3 During any period when the Supplier's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Agreement, the Supplier's Representative may temporarily delegate their functions to another person by giving the Authority written notice and seeking the Authority's approval of the identity of such person and the extent of his authority. The Authority shall not unreasonably withhold or delay approval of the delegate under this Clause 13.3.3.

13.4 Authority Commercial Lead

13.4.1 The Authority shall appoint the person whose name, address, email address and telephone number is set out in Clause 12 (Notices) as the ADT Commercial Lead in connection with this Agreement.

13.5 Change in ADT Commercial Lead

13.5.1 The Authority may propose a change in the identity of the ADT Commercial Lead and Clause 12 (Notices) shall be updated accordingly.

14. AUTHORITY'S DISCLOSED DATA

14.1 Authority Disclosed Data

14.1.1 Subject to Clause 14.4 (Fraudulent Statements):

- (A) The Authority does not make any representation or give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority Disclosed Data; and
- (B) Neither the Authority nor any Authority Related Party shall be liable to the Supplier in contract, tort (including the tort of negligence) or for breach of any statutory duty or otherwise as a result of:
 - 1. any inaccuracy, omission, unfitness for any purpose or

inadequacy of any kind whatsoever in the Authority Disclosed Data; or

2. any failure to make available to the Supplier any materials, documents, drawings, plans or other information relating to the Agreement or the Competition.

14.2 **Supplier's Due Diligence**

14.2.1 Subject to Clause 14.4 (Fraudulent Statements) and 14.5 (Supplier's Standard of Care), on entering into this Agreement, the Supplier agrees it has been given an opportunity to carry out a review and investigation of the documents provided on the Defence Sourcing Portal and the Clarification Responses, and shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) as a consequence of:

- (A) any information not being provided on the Defence Sourcing Portal or the Clarification Responses where such information is not material;
- (B) any fact or circumstance that has been fairly disclosed in the Defence Sourcing Portal or the Clarification Responses;
- (C) any fact or circumstance which the Supplier, or its agents or advisers were, or ought reasonably to have been, aware of as a result of the contents of the Defence Sourcing Portal or the Clarification Responses; or
- (D) any fact or circumstance which a Tenderer, acting in accordance with Good Industry Practice, would have been aware of having made reasonable due diligence enquiries.

14.3 **No Relief**

14.3.1 Subject to Clause 14.4 (Fraudulent Statements) and Clause 14.5 (Supplier's Standard of Care), the Supplier shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient.

14.4 **Fraudulent Statements**

14.4.1 Nothing in this Clause 14 (Authority's Disclosed Data) shall exclude any liability which the Authority would otherwise have to the Supplier for statements made fraudulently or fraudulent omissions to make statements prior to the date of this Agreement.

14.5 Supplier's Standard of Care

Where:

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

14.5.2 the Supplier has exercised Good Industry Practice in assessing the accuracy and sufficiency of that information; the Supplier shall not be liable for, nor suffer any Deduction or withheld amount in respect of, any acts or omissions undertaken in the provision of the Services in reliance upon that information.

15. ASSIGNMENT AND NOVATION**15.1 Assignment or Novation by the Supplier**

15.1.1 Except where expressly permitted under this Agreement, the Supplier shall not (whether absolutely or by way of security and whether in whole or in part) assign, transfer, declare itself a trustee for a Third Party of, create an Encumbrance over, novate or otherwise dispose in any manner whatsoever of the benefit or burden of this Agreement (each of the above a "Supplier dealing") without the prior written consent of the Authority to be given or withheld in its sole discretion and any purported Supplier dealing in contravention of this Clause 15.1 (Assignment or Novation by the Supplier) shall be ineffective.

15.1.2 The provisions of 15.1.1 shall not apply in the event of Supplier minor internal restructuring.

15.2 Assignment or Novation by the Authority

15.2.1 Except where expressly permitted under this Agreement, the Authority shall not without the prior written consent of the Supplier (not to be unreasonably withheld) assign, transfer, novate or otherwise dispose of the benefit or burden of this Agreement (each of the above an "Authority dealing"), unless such transfer takes place under statute or is to the Crown or another manifestation or agency of the Crown, or unless the obligations of the person to whom and in whose favour any such interest is assigned, transferred, novated or otherwise disposed of are fully and unconditionally guaranteed by the Crown, and any purported Authority dealing in contravention of this Clause 15.2 (Assignment or Novation by the Authority) shall be ineffective.

15.3 Notices

15.3.1 Any notice given under this Clause 15 (Assignment and Novation) shall comply with Clause 12.1.2 and shall not be given by email.

16. SEVERABILITY

- 16.1 If any provision of the Agreement is held to be invalid, illegal or unenforceable to any extent then:
- 16.1.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Agreement (but without invalidating any of the remaining provisions of the Agreement or any such provision to the extent that it is not invalid, illegal or unenforceable); and
 - 16.1.2 the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision (or the invalid, illegal or unenforceable part thereof) 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 (or the invalid, illegal or unenforceable part thereof).

17. FORMAL AMENDMENTS TO THE AGREEMENT

- 17.1 The Authority shall be entitled, acting reasonably, to require changes to the Agreement in accordance with this Clause. All changes shall be incorporated into the Agreement, upon agreement between the parties, by formal amendment raised by the ADT Commercial Lead.
- 17.2 The formal written amendment agreement shall consist of the:
- 17.2.1 Authority proposal;
 - 17.2.2 issue of a serially numbered amendment letter, by the Authority; and
 - 17.2.3 unqualified acceptance of the offer from the Supplier.
- 17.3 The amendment shall come into force only when the Supplier has returned the DEFFORM 10B as an unqualified acceptance of the Authority's offer.
- 17.4 Only the Authority's Commercial Officer is authorised to amend the terms and conditions of the Agreement and such amendment shall only have effect when agreed in writing.
- 17.5 Where necessary the Supplier shall either confirm the existing Parent Company Guarantee is relevant or provide a revised Parent Company Guarantee, with the DEFFORM 10B.
- 17.6 In the event that the Supplier proposes an amendment to the Agreement ("Supplier Proposal") then the following process shall apply:
- 17.7 The Supplier shall issue its Supplier Proposal in writing to the ADT Commercial Lead.

- 17.8 The Authority shall consider the Supplier Proposal and shall acknowledge receipt to the Supplier within five (5) Business Days. The acknowledgment shall also provide an indication of likely time scale of the Authority's definitive response.
- 17.9 The Authority's response through the ADT Commercial Lead shall either:
- 17.9.1 Formally notify the Supplier of its decision to progress the Supplier Proposal by instigating the commercial process as set out under Clause 17.2 with the issue of an Authority Proposal; or
 - 17.9.2 Formally notify the Supplier of its decision not to progress with the Supplier Proposal.
- 17.10 For the avoidance of doubt nothing said, done or written by any person, nor anything omitted to be said, done or written by any person, including, but without limitation, any servant or agent of the Authority, shall in any way affect the rights of the Authority, or modify, affect, reduce or extinguish the obligations and liabilities of the Supplier under the Agreement, or be deemed to be a waiver of the rights of the Authority, unless stated in writing and signed by the ADT Commercial Lead.
- 17.11 An amendment to the Agreement shall not come into effect until the Supplier has signed and returned DEFFORM 10B as an unqualified acceptance to the ADT Commercial Lead.

18. WAIVER

- 18.1 The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing (which for this purpose does not include email) and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

19. NO PARTNERSHIP, AGENCY OR EMPLOYMENT RELATIONSHIP

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

20. COUNTERPARTS

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

21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 21.1 Where, and only where, either by a Clause which has been expressly included in the Agreement or by another term which specifically refers to this Clause, the Agreement expressly states that a Third Party shall be entitled to enforce a term of the Agreement:

21.1.1 the said Third Party shall be entitled to enforce that term in his own right;

21.1.2 the Supplier shall inform the said Third Party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause) relevant to the exercise of that right; and

21.1.3 the Third Party's rights shall be subject to any provision in the Agreement:

- (A) that provides for the submission of disputes under the Agreement generally or the said rights in particular to arbitration (Clause 57, Dispute Resolution Procedure); and
- (B) that stipulates the law and jurisdiction that will govern the Agreement (Clause 2, Governing Law).

- 21.2 Subject to Clause 44 (Transfer Regulations), and Schedule N (Transfer Regulations), and notwithstanding anything to the contrary elsewhere in this Agreement, no right is granted to any person who is not a party to the Agreement in his own right and the parties to this Agreement declare that they have no intention to grant any such right.

22. ENTIRE AGREEMENT

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

- 22.2 The Parties confirm that:

22.2.1 in entering into this Agreement and the Associated Contracts they have not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the Associated Contracts; and

22.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement or the Associated Contracts are pursuant to this Agreement or such Associated Contracts, and without limitation, neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Agreement) in relation to any such representation, warranty, assurance, covenant, indemnity, undertaking or commitment.

23. CONFLICTS OF INTEREST

- 23.1 The Authority and the Supplier agree that it is a fundamental principle of this Agreement that the Supplier and the Supplier Related Parties and COI Associates shall avoid or manage conflicts of interest in the manner set out in Schedule F (COI Compliance Regime).
- 23.2 The Supplier agrees that it shall, and it shall procure that the Supplier Related Parties and COI Associates shall, adopt and comply with the COI Compliance Regime and, without in any way derogating from the obligations set out elsewhere in this Agreement (including Clause 71 (Confidentiality)), deal with all Commercially Confidential Information in accordance with the terms of such COI Compliance Regime.
- 23.3 During the Term (and for a further six (6) Months after the Expiry Date or Termination Date (as applicable)) the Supplier shall promptly give notice to the Authority of any intention of the Supplier or a COI Associate to bid for or enter into a DE&S Contract and Schedule F (COI Compliance Regime) shall apply.
- 23.4 Without prejudice to Clause 23.2, the Supplier shall ensure that prior to entering into a Sub-contract:
- 23.4.1 the COI Compliance Regime shall be amended to reflect any requirements of the Authority to manage conflicts of interest that may exist in relation to the Sub-contractor and its associates in a manner satisfactory to the Authority (acting reasonably); and
- 23.4.2 the Sub-contractor shall enter into a Compliance Agreement either as a separate agreement or within the terms of the relevant Sub-contract.
- 23.5 The Authority may impose conditions, including, if appropriate, a prohibition from bidding, in relation to any bid, or proposed bid, by the Supplier or any COI Associate for a contract with the Authority which is a DE&S Contract, where the Authority (acting reasonably) considers that there could be a conflict of interest which the

Authority does not consider the arrangements in Schedule F (COI Compliance Regime) are sufficient to manage.

24. PROHIBITED ACTS

- 24.1 The Supplier shall not commit a Prohibited Act and shall procure that the Supplier Related Parties shall not commit a Prohibited Act.
- 24.2 If a Prohibited Act is committed by the Supplier or a Supplier Related Party (with or without the knowledge or authority of the Supplier) in relation to this Agreement or any other contract with the Crown, the Authority shall be entitled (in its discretion) to do any one or more of the following:
- 24.2.1 terminate the Agreement under Clause 52 (Early Termination) as a Supplier Event of Default;
- 24.2.2 recover from the Supplier the amount or value of any such gift, consideration or commission;
- 24.2.3 recover from the Supplier:
- (A) the amount of any Loss resulting from a termination under Clause 52 (Early Termination) as a Supplier Event of Default; or
 - (B) any other Loss sustained in consequence of any breach of this Clause 24, where the Agreement has not been terminated, or
- 24.2.4 if a Prohibited Act is committed by a Supplier Related Party, to require the Supplier to terminate its relationship with that Supplier Related Party (save as in respect of an employee, where (without prejudice to the Authority's right to remove the employee pursuant to Schedule H (Liability for Engaged Personnel) such action shall be at the discretion of the Supplier (or the employee's employer, if different) and shall be carried out in accordance with the Supplier's (or the employer's) normal disciplinary procedures) and procure the performance of any affected part of the Agreement by another person.
- 24.3 In exercising its rights or remedies under this Clause 24, the Authority shall:
- 24.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and
- 24.3.2 give all due consideration, where appropriate, to action other than termination of the Agreement, including requesting that the Supplier consider (or procures that the relevant employer considers) taking disciplinary action against an employee where the Prohibited Act is that of such employee.

- 24.4 Promptly, upon becoming aware of any Prohibited Act having been committed (or of a reasonable suspicion that a Prohibited Act has been or will be committed) by the Supplier or by a Supplier Related Party, the Supplier shall notify the Authority of such act or suspicion.

PART II– PARTIES' RIGHTS AND OBLIGATIONS

25. OBLIGATIONS OF THE AUTHORITY

25.1 Compliance with Law

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

25.2 Obligations of the Authority in relation to Engaged Personnel

25.2.1 The Authority shall comply with its obligations in relation to Engaged Personnel as set out in Schedule H (Management of Engaged Personnel).

26. OBLIGATIONS OF THE SUPPLIER

26.1 Obligations of the Supplier

26.1.1 The Supplier shall provide Engaged Personnel to the Authority in accordance with Schedule B (Requirements), Schedule L (Dispute Resolution Procedure) and Schedule H (Management of Engaged Personnel).

26.2 Standards of Performance

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

- (A) in compliance with all Applicable Laws;
- (B) in compliance with Good Industry Practice;
- (C) in compliance with the core concepts of ISO 44001 Collaborative Business Relationship Management.
- (D) in compliance with the Authority's health and safety policies (as updated from time to time provided that the Supplier is aware of such update. It shall be the responsibility of the Supplier to maintain such awareness by liaison with the Authority's health and safety policy providers);
- (E) in a manner designed to ensure that all arrangements meet all standards, specifications and requirements as may be set out in the Authority's current departmental policy (as updated from time to time);
- (F) without limiting Clause 26.2.1.D, in a manner that is consistent with the Authority discharging its functions and statutory duties and that would reasonably be expected not to lower the reputation of the Authority in

the eyes of any Third Party, including (without limiting Clause 47.2 (Tax Non-compliance)) in relation to any taxation matter;

- (G) in compliance with the relevant Approved Tasking Order;
- (H) exhibiting the values and standards set out in "Civil Service values and standards of behaviour", available online first published 30 November 2010 last updated 16 March 2015, and as further updated from time to time;
- (I) in compliance with the COI Compliance Regime.

27. ACCEPTANCE OF SUPPLIER DELIVERABLES

- 27.1 Subject to Clause 27.2, acceptance of Supplier Deliverables occurs at the time and in accordance with the procedure specified in the Approved Tasking Order or, if none is so specified:
- 27.1.1 where the Approved Tasking Order specifies a time limit within which to reject, that time has elapsed, or;
 - 27.1.2 where the Approved Tasking Order specifies no time limit within which to reject, and a reasonable time has elapsed since delivery has occurred in accordance with Clause 29; or
 - 27.1.3 when it has been delivered and the Authority does any act in relation to it which is inconsistent with the Supplier's ownership.
- 27.2 The Authority shall not have accepted Supplier Deliverables:
- 27.2.1 merely because the Authority asks for, or agrees to, rework of Supplier Deliverables under an arrangement with the Supplier; or
 - 27.2.2 unless otherwise specified in the Approved Tasking Order, merely because the Supplier Deliverables has been delivered to a Third Party.
- 27.3 Unless otherwise specified in the Approved Tasking Order, the Authority shall not be deemed to have accepted Supplier Deliverables unless it has had a reasonable opportunity to examine the Supplier Deliverables after delivery for the purpose of ascertaining whether it is in conformity with the Approved Tasking Order.
- 27.4 Acceptance shall be governed by this Clause to the exclusion of any common law or statutory provision relating to acceptance of goods.
- 27.5 Where software is to be supplied as a requirement of the Approved Tasking Order it will be subject to the provisions of this Clause as if it were a Supplier Deliverable.

28. REJECTION OF SUPPLIER DELIVERABLES

- 28.1 Prior to acceptance by the Authority in accordance with Clause 27 (Acceptance of Supplier Deliverables), the Authority may reject any Supplier Deliverable (whether or not after inspection) which does not conform with the requirements of the Approved Tasking Order.
- 28.2 Subject to Clause 28.5, the Supplier shall at their own expense and within ten (10) Business Days of being notified of the rejection remove any Supplier Deliverable which the Authority has rejected.
- 28.3 If the Supplier fails to remove the rejected Supplier Deliverable in accordance with Clause 28.2, the Authority may return it to the Supplier at the Supplier 's risk and expense.
- 28.4 The Supplier shall at their own expense and within the contractual period for delivery, or within such further reasonable period as the Authority may allow, supply Supplier Deliverables that conform with the requirements of the Approved Tasking Order.
- 28.5 The Supplier may object in writing to a notification of rejection by the Authority within the period specified at Clause 28.2. If the objection is not resolved within a reasonable time, it shall be treated as a dispute within the meaning of Clause 57 (Dispute Resolution Procedure), as applicable. Unless otherwise agreed the Supplier shall not remove the Supplier Deliverables which are the subject of the rejection notice unless and until the objection or dispute has been resolved in favour of the Authority.

29. DELIVERY OF SUPPLIER DELIVERABLES

- 29.1 The Supplier shall deliver the Supplier Deliverables to the Authority in accordance with the terms of the Approved Tasking Order.
- 29.2 Unless otherwise agreed, delivery of Supplier Deliverables shall occur upon the Supplier Deliverable being handed over by the Supplier to the Task Order Delivery Manager (or their delegate).
- 29.3 Unless otherwise agreed, the property in the Supplier Deliverables shall pass from the Supplier to the Authority upon delivery in accordance with this Clause.
- 29.4 Until delivery, the risk of loss or damage to the Supplier Deliverables shall remain with the Supplier.
- 29.5 Where, after delivery, a Supplier Deliverable is rejected by the Authority in accordance with Clause 28 (Rejection of Supplier Deliverables), that Supplier Deliverable shall, for the purposes of the Agreement, be considered as not having been delivered under the Agreement and the property in that Supplier Deliverable

shall return to the Supplier unless a notice has been issued to the Authority in accordance with Clause 57 (Dispute Resolution Procedure).

30. UK IMPORT AND EXPORT LICENCES

30.1 If, in the performance of the Agreement or any Approved Tasking Order, the Supplier 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 Supplier. The Authority shall provide the Supplier with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

30.2 Obtaining a Licence or authorisation from a foreign government – Supplier obligations

30.2.1 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 Agreement or any Approved Tasking Order, the Supplier shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Supplier is the applicant for the licence or authorisation the Supplier shall:

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

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

(2) the end use as: For the Purposes of HM Government; and

(B) 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".

30.3 If the Supplier or any Sub-contractor in the performance of the Agreement or any Approved Tasking Order 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 Supplier or that Sub-contractor. For the purposes of this Clause, materiel shall mean information, technical data and items, including articles, components of articles and software.

- 30.4 Where the Agreement or Approved Tasking Order performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Supplier shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Agreement or Approved Tasking Order risk register and in the risk management plan for the Agreement or Approved Tasking Order, with appropriate review points. Where there is no requirement under the Agreement or Approved Tasking Order for a risk management plan, the Supplier shall submit this information to the ADT Commercial Lead.
- 30.5 During the term of the Agreement and for a period of up to two (2) years from completion of the Agreement, the Authority may make a written request to the Supplier 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 Supplier before making a determination of whether the Authority or the Supplier is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Supplier that the Supplier is best placed to make such request:
- 30.5.1 the Supplier shall, or procure that the Supplier's Sub-contractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an 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 Supplier 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
- 30.5.2 the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- 30.6 Where the Authority determines that it is best placed to make such request the Supplier 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.
- 30.7 Where the Authority invokes Clause 5 (Appointment and Liability) or 6 (Non-Exclusive Agreement) the Authority will pay the Supplier a fair and reasonable charge for this service based on the cost of providing it.
- 30.8 Where the Supplier subcontracts work under the Agreement, which is likely to be subject to foreign export control, import control or both the Supplier shall use reasonable endeavours to incorporate in each Sub-contract equivalent obligations to those set out in this Clause. Where it is not possible to include equivalent terms

to those set out in this Clause, the Supplier shall report that fact and the circumstances to the Authority.

30.9 Obtaining A Licence Or Authorisation From A Foreign Government – Authority Obligations

30.9.1 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 Supplier 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 Agreement or Approved Tasking Order.

30.9.2 The Authority shall provide such assistance as the Supplier may reasonably require in obtaining any UK export licences necessary for the performance of the Agreement or Approved Tasking Order.

30.10 Supplier Obligation To Provide Information

30.10.1 The Supplier shall use reasonable endeavours to identify whether any Supplier Deliverable is subject to:

- (A) a non-UK export licence, authorisation or exemption; or
- (B) any other related transfer or export control,
- (C) that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the intellectual property-specific restrictions of the type referred to in Clause 70 (Data Protection).

30.11 If at any time during the term of the Agreement the Supplier becomes aware that all or any part of the Supplier Deliverables are subject to Clause 30.1 or Clause 30.2, it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) calendar days of knowledge of any affected Supplier Deliverable and in any event such notification shall be not less than thirty (30) calendar days prior to delivery of the Supplier Deliverables.

30.12 If the information to be provided under Clause 30.2 has been provided previously to the Authority by the Supplier under the Agreement, the Supplier may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 30.2.

30.13 During the term of the Agreement, the Supplier shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under

Clause 12 (Notices) or 13 (Representatives) of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.

- 30.14 For a period of up to two (2) years from completion of the Agreement and in response to a specific request by the Authority, the Supplier shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 12 (Notices) or 13 (Representatives) of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 30.15 Where following receipt of materiel from a Sub-contractor or any of its other suppliers, restrictions are notified to the Supplier by that Sub-contractor, supplier or other Third Party or are identified by the Supplier, the Supplier shall immediately inform the Authority by issuing an updated DEFFORM 528. Within five (5) Business Days of such notification, the Supplier 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 Supplier within ten (10) Business Days of receipt of a proposal whether it is acceptable and where appropriate the Agreement shall be modified in accordance with its terms to implement the proposal.
- 30.16 If the restrictions prevent the Supplier from performing its obligations under the Agreement 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 Agreement in accordance with Clause 17 (Formal Amendments to the Agreement) or as otherwise may be provided by the Agreement or to terminate the Agreement. Except as set out in Clause 30.18, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Agreement, costs incurred by the Supplier 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 Agreement.
- 30.17 In the event that the restrictions notified to the Authority pursuant to Clause 30.12 were known or ought reasonably have been known by the Supplier (but were not disclosed) at Agreement award or if restrictions notified to the Authority pursuant to Clause 30.14 or Clause 30.16 were known or ought reasonably to have been known by the Supplier at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 30.12, termination under Clause 30.17 will be in accordance with Clause 54 (Consequences of Termination or Expiry) and the provisions of Clause 30.20 will not apply.
- 30.18 **Authority obligation to provide information**

- 30.18.1 The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Supplier as GFA. Where the Authority is to provide materiel necessary to enable the Supplier to perform the Agreement 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 30.11 above, the Authority shall provide a completed DEFFORM 528 (Import and Export Licences) or will provide a new or updated DEFFORM 528 to the Supplier within thirty (30) calendar days of the date of knowledge and in any case not later than thirty (30) calendar days prior to the delivery of such materiel to the Supplier.
- 30.18.2 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 Supplier was incomplete or inaccurate less than thirty (30) calendar days prior to the delivery to the Supplier 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.
- 30.19 Where:
- a) restrictions are advised by the Authority to the Supplier in a DEFFORM 528 provided pursuant to Clause 30.18.1 or Clause 30.18.2 or both; or
 - b) any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate,
- 30.19.1 the Authority and the Supplier 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 Supplier to perform its obligations under the Agreement or any Approved Tasking Order, the matter shall be handled under the terms of Clause 17 (Formal Amendments To The Agreement) or as may otherwise be provided by the Agreement as appropriate and if no alternative solution satisfies the essential terms of the Agreement and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Agreement. Termination under these circumstances will be under the terms of Clause 54 (Consequences of Termination or Expiry) as appropriate and as referenced in the Agreement.

30.20 Interim Position

30.20.1 Pending agreement of any amendment of the Agreement as set out in Clause 30.16 or 30.19.1, provided the Supplier takes such steps as are reasonable to mitigate the impact the Supplier shall be relieved from its obligations to perform those elements of the Agreement directly affected by the restrictions or provision of incorrect or incomplete information, within five (5) Business Days of receipt of a proposal whether it is acceptable and where appropriate the Agreement shall be modified in accordance with its terms to implement the proposal.

31. SUB-CONTRACTS**31.1 Appointment of Sub-contractors**

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

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

31.1.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the ADT Commercial Lead in writing of

- (d) the proposed Sub-contractor's name, registered office and company registration number;

31.1.3 If requested by the Authority within ten (10) Business Days of receipt of the Supplier's notice issued pursuant to Clause 31.1.2, the Supplier shall also provide:

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

31.1.4 The Authority may, within ten (10) Business Days of receipt of the Supplier's notice issued pursuant to Clause 31.1.2 (or, if later, receipt of any further information requested pursuant to Clause 31.1.2), object to the appointment of the relevant Sub-contractor if it considers that:

- (g) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (h) the proposed Sub-contractor should be excluded in accordance with Clause 31.3 (Termination of sub-contracts);

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

31.1.5 If:

- (i) the Authority notifies the Supplier it may proceed with the proposed appointment; or
- (j) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Business Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 31.1.2; and
 - (ii) any further information requested by the Authority pursuant to Clause 31.1.3 and

31.2 the Supplier may proceed with the proposed appointment and shall list the Sub-contractor in Schedule D (Supply Chain Management) [by way of Contract amendment].

Management of Sub-contracts

31.2.1 Where the Supplier enters into a Sub-contract, the Supplier shall:

- a) ensure such Sub-contract contains:
- b) provisions requiring payment to be made to the Sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the Sub-contract requirements;
- c) provisions requiring compliance by the Sub-contractor of a Compliance Agreement drawn up in accordance with Clause 23.4.2 (either as a separate agreement or within the terms of the relevant Sub-contract);
- d) provisions equivalent to those set out in Part XII (Security);
- e) a requirement that where any GFA is used under a Sub-contract, reasonable access shall be provided to the Authority for inspection of the GFA;
- f) provisions requiring the Sub-contractor to comply with Schedule C (Supplier Group Governance and Management) unless the Authority agrees otherwise;

- g) provisions requiring information equivalent to that provided under Clause 31.1.3 to be provided to the Authority where requested;
- h) in the case of a Sub-contract with a member of the Supplier Group, provisions entitling the Supplier to terminate the Sub-contract with immediate effect by written notice to the Sub-contractor (such notice to take effect on the date of receipt by the Sub-contractor) if there is a change of control of the Sub-contractor that is required to be notified to the Authority pursuant to Clause 8 (Change of Control of the Supplier and Change in COI Associates);
- i) provisions preventing the Sub-contractor from exercising any right to terminate the Sub-contract without giving the Authority twenty (20) Business Days notice;
- j) a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce its rights under that further sub-contract; and
- k) ensure that the COI Management Process is updated and agreed with the Authority to deal with any matters that the Authority considers are required as a result of the Supplier's entry into Sub-contract.
- l) On request from the Authority, enter into a Direct Agreement with the Authority and the Sub-contractor in the form set out in Annex D (Form of Direct Agreement) to Schedule D (Supply Chain Management) to this Agreement.

31.2.2 Any sub-contracting by the Supplier shall be without prejudice to its obligations to the Authority under this Agreement.

31.3 Termination or amendment of Sub-contracts

31.3.1 The Supplier shall keep the Authority informed of any circumstance relating to a Sub-contract (or any further sub-contract of any tier to that Sub-contract) which may cause the Supplier to contravene its obligations under this Agreement and, without prejudice to its rights under Schedule F (COI Compliance Regime), the Authority may require that the relevant Sub-contract is terminated or amended in such circumstances (but the Authority shall have no liability to the Supplier or Sub-contractor for any payment required in connection with any such termination or amendment).

31.3.2 The Supplier shall notify the Authority as soon as reasonably practicable after:

- (A) a Sub-contract is terminated or otherwise determined;
- (B) the material terms of a Sub-contract are amended; or
- (C) it becomes aware that it is reasonably likely that a Sub-contract will be terminated or otherwise determined or amended, and following such

notification, the Supplier shall, as soon as reasonably practicable, provide details of its proposals to maintain its capability to perform its obligations under this Agreement.

31.4 Retention of Legal Obligations

31.4.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 31, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Engaged Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Engaged Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

32. ADVERTISING SUBCONTRACTS

32.1 In this Clause only, the following term has the meaning given to it below: "Sub-Contract" means any sub-contract entered into or to be entered into by the Supplier or any purchase order placed or to be placed by the Supplier in connection with the Agreement where the aggregate price and/or any other consideration (in each case excluding VAT and before the application of any deduction, set-off or other remedy) payable by the Supplier under that sub-contract or purchase order is or is reasonably estimated to be greater than the sum of £200,000 (two hundred thousand pounds sterling) and 'Sub-Contractor' shall be construed accordingly.

32.2 This Clause shall not apply:

32.2.1 where pursuant to Regulation 37(3) of the DSPCR the Authority obliges the Supplier to apply the provisions set out in Part 7 of the Regulations to all sub-contracts which the Supplier intends to award to third parties in connection with the Agreement after the Commencement Date; or

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

32.3 Subject to Clause 32.1, where the Supplier, after the Commencement Date, elects to advertise the subject matter of any Sub-Contract with the view to appointing one or more Sub-Contractors, it shall (unless the Authority otherwise agrees in writing):

32.3.1 promptly notify the Authority, if the Supplier intends to award a Sub-Contract;

- 32.3.2 publish an advertisement on (and provide all information required by) the Defence Sourcing Portal in respect of each and any Sub-Contract opportunity;
- 32.3.3 within 30 (thirty) calendar days after the date on which such Sub-Contract shall have been awarded update the relevant advertisement on the Defence Sourcing Portal in respect of such Sub-Contract identifying the name and registered office address details of the Sub-Contractor so appointed under such Sub-Contract and providing a description of the subject matter and the value (excluding VAT) of such Sub-Contract;
- 32.3.4 provide reports to the ADT Commercial Lead, if so requested, on the number, type and value of Sub-Contract opportunities placed on the Defence Sourcing Portal and awarded in its supply chain during the Term; and
- 32.3.5 promote the Defence Sourcing Portal to all Sub-Contractors and encourage those operators to register on it.

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

33. SME SPEND DATA COLLECTION

- 33.1 The Supplier shall by 30 June (or such alternative date agreed between the Parties (acting reasonably) in writing having regard for the end date of the Supplier's financial year)) each year during the Term at (subject to the operation of clause 33.4) no additional cost, charge and expense to the Authority provide to the Authority the information identified in DEFFORM 139 (as amended by the Authority from time to time and with each such amended version taking effect in accordance with Clause 33.3), including:
 - 33.1.1 the total Revenue on and prior to the Reporting Date in respect of the relevant financial year immediately prior to the Reporting Date;
 - 33.1.2 the total value of Sub-contract Revenue paid under the Agreement in respect of the relevant financial year immediately prior to the Reporting Date; and
 - 33.1.3 the total value of Sub-contract Revenue paid to SMEs and VCSEs in respect of the relevant financial year immediately prior to the Reporting Date.

- 33.2 The Authority may issue from time to time guidance to the Supplier in relation to the completion of DEFFORM 139 (and the Supplier shall not unreasonably refuse to comply with any such guidance so issued when completing such DEFFORM and complying with this Clause).
- 33.3 The Authority may at any time during the Term change the reporting template in DEFFORM 139, provided that the Authority shall have given a minimum of 30 (thirty) calendar days' advance notice in writing of the scope and nature of such change or changes. The changes may include the data required or format of the report or both. The Parties agree that no such change shall constitute a formal amendment of the Agreement.
- 33.4 Where the Supplier is reasonably likely to incur additional costs arising from any change to the reporting template in DEFFORM 139 notified by the Authority to the Supplier pursuant to Clause 33.4, the Supplier may notify the Authority to such effect providing at the same time a Supplier Proposal in accordance with the requirements set out in Clause 17 (Formal Amendments to the Agreement).
- 33.5 Notwithstanding the requirements of Clause 35.2 (Retention of Records), the Supplier shall retain the information identified in Clause 33.1 and supporting records for a period of 24 (twenty-four) months commencing on the date of their provision pursuant to Clause 33.1 of this Clause.

PART III– FINANCIAL INSPECTION AND REVIEW**34. OPEN BOOK ACCOUNTING AND FINANCIAL MANAGEMENT INFORMATION****34.1 Open Book Accounting**

34.1.1 The Supplier shall at all times maintain (and make available to the Authority on request) records of the salary and other costs that have been taken into account in calculating the Fees at all times during the Term and the time incurred by all Engaged Personnel in connection with the provisions of the Services.

34.2 Financial Management Information

34.3 The Supplier shall maintain the financial management information (which for the purposes of this Agreement shall mean the value of work completed at a given point in time), and shall report it to the Authority in accordance with Schedule E (Payment and Performance).

35. REGULARITY AND PROPRIETY**35.1 Inspection and Review**

35.1.1 The Supplier shall implement systems and processes for performance reporting and for reviewing its compliance with this Agreement.

35.1.2 The Supplier shall provide such reports as are required under this Agreement.

35.2 Retention of Records

35.2.1 The Supplier and their Sub-contractors shall maintain and retain all information and records required for the purposes of this Agreement for a period of six (6) years after the Expiry Date or Termination Date (as applicable), or such longer period as may be required by Applicable Laws, in such condition, format and detail as is adequate for their intended purpose, or as required by the Authority.

35.3 Authority Review

35.3.1 The Authority may nominate representatives including from its Cost Accounting and Assurance Service and external advisors (“**Review Representatives**”) to undertake, at any time or frequency, financial and management reviews in relation to the Agreement involving:

- 35.3.2 inspection, review, periodic monitoring or spot checks of the Supplier's activities and costs incurred in connection with this Agreement or the Services and any information required to be kept by the Supplier in connection with this Agreement;
- 35.3.3 reviews of the Supplier's compliance with its internal procedures, quality management systems, procedures required by Applicable Laws and any operating procedures, policies or standards ancillary to, or used in part connection or accordance with the same; and
- 35.3.4 the copying and collation of any information held in electronic or paper form.

35.4 **Co-operation**

- 35.4.1 The Supplier shall (and shall procure that the Supplier Related Parties shall) promptly provide the Review Representatives with all reasonable assistance and co-operation, including:
 - (A) ensuring Review Representatives have access to the Supplier's sites and allowing the Review Representatives use of suitable office accommodation if reasonably required in relation to any inspection, review, periodic monitoring, or spot check under Clause 35.3 (Authority Review); and
 - (B) making any documents and records available (including those maintained under Clause 34 (Open Book Accounting and Financial Management Information) and this Clause 35 (Regularity and Propriety) to Review Representatives for inspection, providing a reasonable number of copies of any documents or records requested to Review Representatives or granting copying facilities to Review Representatives for the purposes of making such copies.
- 35.4.2 To the extent that the Review Representatives require access to a site, document or record that does not belong to the Supplier, the Supplier shall use all reasonable endeavours to provide such access.

35.5 **Review Findings and Corrective Action**

- 35.5.1 The Supplier shall be entitled to receive a copy of the Authority's findings once completed in relation to any review carried out in accordance with Clause 35.3 (Authority Review), subject to any redaction considered necessary or desirable by the Authority.
- 35.5.2 Within fifteen (15) Business Days of the Supplier's receipt of the review findings, the Parties shall meet to discuss the review findings and in particular any areas identified in the review findings as requiring corrective action ("Corrective Action") (such meeting being the "Review Close-Out Meeting").

- 35.5.3 At such Review Close-Out Meeting, the Supplier shall have the opportunity to demonstrate to the reasonable satisfaction of the Authority that some or all of the relevant review findings are incorrect.
- 35.5.4 If at the Review Close-Out Meeting, the Authority considers that certain Corrective Action is required, the Supplier shall within five (5) Business Days of the Review Close-Out Meeting (or such other date as agreed between the Parties) either:
- (A) carry out the Corrective Action; or
 - (B) propose to the Authority a plan for carrying out the Corrective Action.
- 35.5.5 Where the Supplier proposes a plan for the Corrective Action in accordance with Clause 35.5.4(B), the Authority shall have ten (10) Business Days to notify the Supplier whether it accepts such proposed plan for the Corrective Action (such acceptance not to be unreasonably withheld).
- 35.5.6 Failure of the Authority to provide such notification in accordance with Clause 35.5.5 shall constitute deemed acceptance by the Authority.
- 35.5.7 Where the Authority notifies the Supplier in accordance with Clause 35.5.5 that it does not accept the plan for Corrective Action, the Parties shall endeavour within the following ten (10) Business Days to agree any necessary amendments to the plan for the Corrective Action.
- 35.5.8 In the absence of agreement within such ten (10) Business Days period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 57 (Dispute Resolution Procedure) and Schedule L (Dispute Resolution Procedure).
- 35.6 Security Systems**
- 35.6.1 The Supplier shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of or alteration to, or destruction of, data during any review undertaken pursuant to Clause 35.3 (Authority Review).
- 35.7 Records of Review Findings**
- 35.7.1 The Supplier shall maintain records containing the findings of any reviews made under this Part III (Financial Inspection and Review) in accordance with Clause 35.2 (Retention of Records).
- 35.8 Supplier's Obligations Persist**

35.8.1 The Supplier shall not be excused from performance of any aspect of its obligations under the Agreement for any period of time during which the Authority is exercising its rights under this Clause 35 (Regularity and Propriety).

35.9 Confidentiality

35.9.1 The Parties obligations under this Clause 35 (Regularity and Propriety) shall be subject to the obligations set out in Part XII (Security), Clause 70 (Data Protection) and Clause 71 (Confidentiality).

PART IV- GOVERNANCE

36. SUPPLIER RELATED PARTY GOVERNANCE

- 36.1 The Supplier shall and shall procure that each member of the Supplier Group shall comply with Schedule C (Supplier Group Governance and Management).

37. MEETINGS AND REPORTS

- 37.1 The Supplier shall and shall procure that each member of the Supplier Group shall comply with the meetings and reporting requirements as set out at Schedule B (Statement of Requirement).

PART V– ASSET MANAGEMENT**38. GOVERNMENT FURNISHED ASSETS AND SUPPLIER ASSETS****38.1 Government Furnished Assets**

- 38.1.1 The Authority shall use reasonable endeavours, on and from the Commencement Date, to provide Government Furnished Resources (“GFR”), Government Furnished Facilities (“GFF”), Government Furnished Equipment (“GFE”), and Government Furnished Information (“GFI”), together the “Government Furnished Assets” or “GFA” in accordance with the listing within Schedule P (GFX).
- 38.1.2 Within ten (10) Business Days of receipt of GFA, the Supplier shall
- (a) check the GFA to verify it corresponds with the GFA specified in Schedule P (GFX);
 - (b) conduct a reasonable visual inspection; and
 - (c) conduct any additional inspection and testing as may be necessary and practicable to check that the GFA is not defective or deficient for the purpose for which it has been provided; and notify the Authority of any defects, deficiencies or discrepancies discovered.
- 38.1.3 The Supplier shall open and maintain a live GFA reporting system throughout the Term of the Agreement, containing a detailed list of all GFA provided by the Authority to the Supplier (and any Sub-contractor). This list must include a description of the GFA; any relevant Approved Tasking Order; laptop asset number; including details of where the relevant GFA is located at all times; date GFA supplied and date GFA returned to the Authority. This live GFA reporting system should be available for inspection and review by the Authority at all times.
- 38.1.4 The register of GFA set out within Schedule P (GFX) may accordingly be updated from time to time to reflect the revised GFA requirements and to reflect the live GFA reporting system maintained by the Supplier on at least an annual basis.
- 38.1.5 The Authority shall have no liability to the Supplier if, when the GFA are made available or offered to be made available on the agreed date, the Supplier fails to make use of them.
- 38.1.6 The Supplier shall comply with the instructions of the Authority regarding any GFA issued to it for the purpose of the Agreement and shall be responsible for the safe custody of the GFA while in its possession or the possession of

a Supplier Related Party. The Supplier shall observe any accounting instructions issued to it by the Authority (see also DEF STAN 05-099).

- 38.1.7 The Supplier shall not modify any GFA without the prior written agreement of the Authority. If the Supplier has any doubt about the suitability of any item, or has proposals for design changes, the Supplier shall promptly advise the Authority accordingly. The Supplier shall ensure that the design of the installation using GFA is in accordance with the specific requirements of such GFA.
- 38.1.8 If the Supplier notifies the Authority under clause 38.1.2 that the GFA is defective or deficient, the Authority shall, within a reasonable time, replace, re-issue or authorise repair of the relevant GFA agreed to be defective or deficient and, if appropriate, the Authority shall also issue written instructions for the return or disposal of the defective or deficient GFA.
- 38.1.9 If either Party identifies that delivery of GFA may be delayed, the Parties shall work together to identify alternative solutions to mitigate the impact of any delay. If agreement is not reached and the GFA are subsequently delivered late, and such late delivery impacts upon the delivery of any Approved Tasking Order against agreed Milestones or Engaged Personnel being able to perform the Services under an Approved Tasking Order:
- 38.1.10 the timeframes required for the delivery of such Approved Tasking Order shall be adjusted accordingly by the number of Business Days of the delay, so the duration remains the same, and the Approved Tasking Order shall reflect the adjusted dates.
- 38.1.11 no additional amount shall be payable by way of compensation for any costs or expenses or losses suffered or incurred by the Supplier in respect of the delay.
- 38.1.12 The Supplier shall not be liable in respect of:
- a) defects or deficiencies notified to the Authority in accordance with clause 38.1.2 or latent defects which the Supplier can show could not reasonably have been discovered by means of the activities described at clause 38.1.2.
 - b) fair wear and tear in GFA resulting from its normal and proper use in the execution of the Agreement (or any Approved Tasking Order) except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Supplier.
 - c) GFA rendered unserviceable as a direct result of ordinary performance of the Agreement or Approved Tasking Order (as applicable).
- 38.1.13 The Supplier shall use reasonable endeavours to minimise any impact on its performance and minimise additional costs payable under Clause 38.1.9.

- 38.1.14 The Supplier shall take such steps as may be reasonably necessary to ensure that it has brought to the attention of all Sub-contractors and any other persons dealing with any GFA that the Authority is the owner of the GFA and that the GFA shall only be used in the execution of the Agreement and for no other purpose, without the prior approval in writing of the Authority.
- 38.1.15 Neither the Supplier, nor any Sub-contractor, nor any Third Party, shall have a lien on GFA, for any sum due to the Supplier, Sub-contractor or any Third Party, and the Supplier shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-contractors and other persons dealing with any GFA.
- 38.1.16 The Supplier shall notify the Authority of any attempts by a Third Party to secure a lien or rights of a similar kind on any GFA. The Supplier shall concurrently notify the Third Party that the Authority is the owner of the GFA.
- 38.1.17 The Supplier shall provide reasonable access to any GFA issued under the Agreement for inspection by the Authority.
- 38.1.18 The Supplier shall return any GFA in accordance with the dates and requirements set out within Schedule P (GFX) or as set out in the Approved Tasking Order or as set out in the live GFA reporting system (as applicable). If the Supplier fails to return any GFA within two (2) Business Days of the required date, the Authority may withhold a sum from the final payment due under the Approved Tasking Order equivalent to the value of such GFA.
- 38.1.19 This Clause 38 (Government Furnished Assets) is without prejudice to the Supplier's obligations under Clause 66 (Protection of Information).
- 38.1.20 The Supplier shall:
- (A) observe the terms and conditions required by the Authority from time to time regarding any GFA made available to the Supplier; and
 - (B) without limiting Clause 38.1.18, be responsible for the safe custody and due return of the GFA and shall be responsible for all loss or damage thereto until re-delivered to the Authority or disposed of in accordance with the Authority's instructions.

39. SUPPLIER'S PERSONNEL AT GOVERNMENT ESTABLISHMENTS

39.1 The following general provisions apply:

- 39.1.1 The Authority shall provide such available administrative and technical facilities for the Engaged Personnel employed at Government Establishments for the purpose of the Agreement as may be necessary for

the effective and economical discharge of work under the Agreement. These facilities will be provided free of charge unless otherwise stated in the Contract.

39.1.2 Any land or premises (including temporary buildings) made available to the Supplier a member of the Engaged Personnel by the Authority in connection with the Agreement or Tasking Order shall be made free of charge, unless otherwise stated in the Tasking Order, and shall be used by the Supplier solely for the purposes of performing the Tasks. The Supplier or member of the Engaged Personnel shall have the use of such land or premises as licensee and shall vacate the same upon completion of the Agreement. Any utilities required by the Supplier shall be subject to the charges set out in the Agreement.

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

39.2 Liability In Respect Of Damage To Government Property

39.2.1 Without prejudice to the provisions of Clause 38 (Government Furnished Assets and Supplier Assets) where those conditions form part of the Agreement, the Supplier shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the Supplier, or by any of their Representatives, arising from the Supplier's or their Representatives' presence on a Government Establishment in connection with the Contract, provided that this Condition shall not apply to the extent that the Supplier is able to show that any such damage was not caused or contributed to by any circumstances within the Supplier's or their Representatives' reasonable control.

39.2.2 The total liability of the Supplier under Clause 39 herein shall be subject to any limitation specified in the Agreement.

39.3 Supplier's Property

39.3.1 All property of the Supplier and their Representatives shall be at the risk of the Supplier whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

(A) where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or Supplier then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

(B) where any property of the Supplier has been taken on charge by the Authority, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

39.4 Medical Treatment Overseas

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

39.5 Injuries, Disease And Dangerous Occurrences

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

39.6 Health And Safety Hazard Control

39.6.1 Where the Supplier enters a Government Establishment for the purpose of performing work under the Agreement:

A. The Supplier shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Agreement of:

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

B. The Authority shall notify the Supplier of:

- i. any health and safety hazards which may be encountered by the Agreementor or any of their Representatives on the Government Establishment;

- ii. any foreseeable risks to the health and safety of the Supplier or any of their Representatives, associated with such hazards; and
 - iii. any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Supplier, in order to control such risks.
- C. The Supplier shall notify their Representatives of and, where appropriate, provide adequate instruction in relation to:
 - i. the hazards, risks and precautions notified by them to the Authority under Clause 39.6.1 A);
 - ii. the hazards, risks and precautions notified by the Authority to the Supplier under Clause 39.6.1.B); and
 - iii. the precautions which, in their opinion, ought to be taken by their Representatives in order to control those risks.
- D. The Supplier shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Agreement with:
 - i. copies of those sections of their own and, where appropriate, their Representatives' Safety Policies which are relevant to the risks notified under Clause 39.6.1 A.;
 - ii. copies of any related risk assessments; and
 - iii. copies of any notifications and instructions issued by them to their Representatives under Clause 39.6.1.C.
- E. The Authority shall provide the Supplier with:
 - i. copies of those sections of its own Safety Policies which are relevant to the risks notified under Clause 39.6.1 B.;
 - ii. copies of any related risk assessments; and
 - iii. copies of any notifications and instructions issued by it to its employees similar to those called for from the Supplier under Clause 39.6.1 C.

PART VI – ENGAGED PERSONNEL MATTERS**40. NON-DISCRIMINATION, EQUALITY AND ANTI-MODERN SLAVERY**

- 40.1 The Supplier shall, and shall procure that any Sub-contractor shall:
- 40.1.1 not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including reassignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief); and
 - 40.1.2 shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Agreement or any Approved Tasking Order is being performed; and
 - 40.1.3 Without prejudice to the generality of the obligation in Clause 40.1 above, the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where the Agreement or Approved Tasking Order is being performed: and
 - 40.1.4 The Supplier agrees to take all reasonable steps to secure the observance of this Clause 40.1 by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the Supplier; and
 - 40.1.5 The Supplier agrees to take reasonable efforts to reflect this Clause in any subcontract that it enters into to satisfy the requirements of the Agreement and to require its subcontractors to reflect this Clause in their subcontracts that they enter into to satisfy the requirements of the Agreement.
- 40.2 The Supplier shall:
- 40.2.1 notify the Authority of the commencement of any legal proceedings or any claims made under the Equality Act 2010 (including the receipt of any Employment Tribunal claim or any early conciliation) in respect of any Supplier personnel in relation to the matters set out in Clause 40.1 ; and
 - 40.2.2 provide the Authority with such other information as may be reasonably required by the Authority to fulfil its obligations as a public authority under:
 - (A) Section 149 of the Equality Act 2010; and
 - (B) the Equality Act 2010 (Specific Duties) Regulations 2011.
- 40.3 The Supplier undertakes, warrants and represents that neither the Supplier nor any of its officers, employees, agents or Sub-contractors:

- 40.3.1 has committed an offence under the Modern Slavery Act 2015 (a “**MSA Offence**”); or
- 40.3.2 has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- 40.3.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

41. MANAGEMENT OF PERSONNEL

- 41.1 The Supplier shall comply with its obligations in relation to Engaged Personnel in Schedule H (Management of Engaged Personnel).

42. KEY PERSONNEL

- 42.1 The Supplier shall appoint the people identified as Key Personnel to those roles, in accordance with Schedule B (Requirements).
- 42.2 The Supplier acknowledges that the Key Personnel are essential to the proper performance of this Agreement to the Authority. The Supplier may propose a change in the identity of the Key Personnel and may suggest a replacement that is as, or more, qualified, experienced and competent as the previous incumbent of such role and fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced. The Supplier shall ensure that a suitably detailed handover is performed.
- 42.3 The Authority may refuse any change to the Key Personnel in its sole discretion, but the Authority’s consent will not be unreasonably withheld.
- 42.4 On and from the Commencement Date, the Key Personnel shall hold BPSS clearance. Within one (1) week of the Commencement Date, the Supplier must demonstrate that such Key Personnel has submitted its paperwork to obtain SC security clearance.
- 42.5 The Supplier shall ensure that prior to being appointed each member of the Key Personnel has:
 - 42.5.1 successfully completed all Supplier-required mandatory training;
 - 42.5.2 successfully completed all Authority-required mandatory training as set out in Schedule B (Requirements), Appendix D (Mandatory Training).

- 42.5.3 signed and returned to the ADT Commercial Lead a Letter of Placement in accordance with Schedule H (Management Of Engaged Personnel), Appendix 1 (Letter Of Placement).
- 42.6 The Supplier shall ensure that:
- 42.6.1 each Key Personnel (including their approved replacements) remains in that role for a period of twelve (12) Months, on a semi-permanent basis (three (3) or four (4) days per week) ;
- 42.6.2 there is a two (2) week handover period to the replacement Key Personnel;
- 42.6.3 any replacement of Key Personnel is staggered and ensures that there is continuity of, and no detrimental effect on, the Services, or otherwise on the performance of this Agreement.
- 42.6.4 Exceptions to the provision of clause 42.6.1 will be considered by the Authority in exceptional cases .

43. NON-SOLICITATION

- 43.1 Between the Commencement Date and the expiry or termination (howsoever caused) of this Agreement (the date of such expiry or termination being the “Relevant Date”), the Supplier covenants with the Authority that it shall not, and shall procure that no member of the Supplier Group nor any Sub-contractor shall, unless it has obtained the prior written consent of the Authority, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the Authority any person:
- 43.1.1 who is, and was, on the first date on which the attempt to solicit or entice away occurs (the “Solicitation Date”):
- a) directly or indirectly employed or engaged by the Authority in a commercial, finance, procurement, programme and project management, integrated logistics or engineering capacity at Role Profile Level Standard Senior Administrator Specialist or above; or
 - b) whose departure from the Authority would be reasonably likely to have a material adverse effect on the Authority’s operations; and
- 43.1.2 with whom at any time during the twelve (12) months prior to the Solicitation Date the Supplier or the applicable member of the Supplier Group or any Sub-contractor had a material amount of contact; or
- 43.1.3 in respect of whom the Supplier or the applicable member of the Supplier Group or any Sub-contractor possessed a material amount of Commercially

Confidential Information as at the Solicitation Date, with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his or her contract of employment or engagement by reason of leaving).

- 43.2 Between the Relevant Date and the expiration of two (2) years from the Relevant Date, the Supplier covenants with the Authority that it shall not, and shall procure that no member of the Supplier Group nor Sub-contractor shall, unless it has obtained the prior written consent of the Authority, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the Authority any person:
- 43.2.1 who is, and was, immediately prior to the Relevant Date:
- a) directly or indirectly employed or engaged by the Authority in a commercial, finance, procurement, programme and project management, integrated logistics or engineering capacity at Role Profile Level Standard Senior Administrator Specialist or above; or
 - b) whose departure from the Authority would be reasonably likely to have a material adverse effect on the Authority's operations; and
- 43.2.2 with whom at any time during the twelve (12) months prior to the Relevant Date the Supplier or applicable member of the Supplier Group or any Sub-contractor had a material amount of contact; or
- 43.2.3 in respect of whom the Supplier or the applicable member of the Supplier Group or any Sub-contractor possessed a material amount of Commercially Confidential Information as at the Relevant Date, with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his or her contract of employment or engagement by reason of leaving).
- 43.3 Notwithstanding Clauses 43.1 and 43.2, any recruitment of any person by the Supplier or a member of the Supplier Group or any Sub-contractor as a result of that person independently responding to any general recruitment advertisement by the Supplier or a member of the Supplier Group or any Sub-contractor in general or specialist publications shall not constitute a breach of this Agreement.
- 43.4 In the event that any person directly or indirectly employed or engaged by the Authority and subject to the restriction in Clause 43.1 is recruited in accordance with Clause 43.3, the Supplier shall not be permitted to employ such person as Engaged Personnel without the Authority's prior written consent.
- 43.5 The Authority shall not until after the cessation of the involvement of a Relevant Personnel in the performance of the Services, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away

from the Supplier or any Supplier Related Party or Sub-Contractor, any Relevant Personnel for Relevant Employment. In this Clause:

43.5.1 “Relevant Personnel” means individual Personnel who were introduced to the Authority in the course of or in connection with the Services; and,

43.5.2 “Relevant Employment” means employment for Relevant Personnel to discharge the type of role or function for the Authority as they performed in relation to the Services.

43.6 Notwithstanding Clause 43.5, any recruitment of any person by the Authority as a result of that person independently responding to any general recruitment advertisement by the Authority in general or specialist publications shall not constitute a breach of this Agreement.

44. TRANSFER REGULATIONS

44.1 The Parties acknowledge that the commencement of the Supplier’s provision of the Services (or any part of them) and the termination of the Supplier’s provision of the Services (or any part of them) pursuant to this Agreement may constitute a relevant transfer for the purposes of the Transfer Regulations, and agree that the provisions of Schedule N (Transfer Regulations) will apply in relation to such commencement or termination.

PART VII PERFORMANCE PAYMENT AND INCENTIVE MECHANISM**45. INVOICING AND PAYMENT****45.1 Performance Management**

45.1.1 The Supplier's performance under this Agreement shall be monitored in accordance with the Performance Management regime in accordance with Schedule E (Payment and Performance).

45.2 Claims for Payment

45.2.1 Where the Supplier is entitled to seek payment from the Authority in accordance with the Payment Mechanism or is otherwise due to be paid a sum by the Authority pursuant to this Agreement, the Supplier shall claim payment of the relevant amount in accordance with this Clause 45 (Invoicing and Payment).

45.3 Authority Payment System

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

45.3.2 Payment for Supplier deliverables will be made by electronic transfer and prior to submitting any claims for payment the Supplier will be required to register their details (Supplier-on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool, or its equivalent.

45.3.3 Where the Supplier is entitled to seek payment of a sum from the Authority in accordance with the Payment Mechanism or is otherwise due to be paid a sum by the Authority pursuant to this Agreement, the Supplier shall submit an invoice using a properly prepared message structure and format in accordance with the Authority Payment System, no later than sixty (60) Business Days after the date on which such right to seek payment of or to be paid such sum arises. The Supplier shall be deemed to have waived its right to seek or receive payment for the relevant sum if it fails to submit an invoice later than sixty (60) Business Days after the date on which such right to seek payment of or to be paid such sum arises.

45.3.4 Claims for payment shall be accompanied by a statement certified by the Supplier's Representative that the amount specified in the invoice is due to the Supplier pursuant to this Agreement.

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

- a) enter the relevant details in the Authority Payment System, indicating confirmation of the relevant amount and notify the Supplier of the relevant purchase order number for the relevant amount; or
- b) notify the Supplier that:
 - i. the Authority is withholding all or any part of the amount claimed by the Supplier pursuant to Clause 46 (Disputed Amounts), giving reasons for withholding such Disputed Amounts; and
 - ii. any amount claimed by the Supplier that is not a Disputed Amount shall constitute a valid, properly completed return for payment (and the Authority shall enter the relevant details in the Authority Payment System in respect of such amount).

45.3.6 Subject to Clause 46 (Disputed Amounts), the Authority shall no later than thirty (30) calendar days after receipt of an invoice, pay the Supplier the relevant amount stated in such invoice.

45.3.7 The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Supplier's obligations nor as a waiver of its rights and remedies either under this Agreement or otherwise.

46. DISPUTED AMOUNTS

46.1 The Authority may withhold any Disputed Amount pending agreement or determination of the Supplier's entitlement in relation to the Disputed Amount, but shall pay any undisputed amounts on or before the due date for payment.

46.2 Within five (5) Business Days following receipt by the Supplier of any notice served by the Authority pursuant to Clause 45.3.5 (Authority Payment System) the Supplier shall respond by notifying the Authority as to whether or not it agrees with the reasons stated in that notice and the grounds for such agreement or disagreement. If the Supplier indicates:

46.2.1 that it does not agree, the Authority shall be entitled to retain on a temporary basis, pending resolution of the Dispute regarding the Disputed Amount or agreement by the Supplier, any amounts withheld pursuant to Clause 45.3.5 (Authority Payment System); or

46.2.2 that it does agree, or if the Supplier fails to make such a response within that time limit, the Authority shall be entitled:

46.2.3 to retain on a permanent basis any amounts withheld pursuant to Clause 45.3.5 (Authority Payment System); or

- a) to reclaim from the Supplier the amount of any over-payment which may have been made to the Supplier together with interest on any such amount calculated in accordance with Clause 48 (Interest on Late Payment).
- 46.3 If the Supplier responds pursuant to Clause 46.2 that it does not agree with all or any of the reasons stated in any notice served by the Authority pursuant to Clause 45.3.5 (Authority Payment System), the matter or matters in question shall be determined pursuant to Clause 57 (Dispute Resolution Procedure).
- 46.4 If it is agreed or otherwise determined pursuant to Clause 57 (Dispute Resolution Procedure) that:
- 46.4.1 the Authority has withheld any amount which the Supplier was entitled to be paid; or
 - 46.4.2 the Supplier has been paid any amount which the Supplier was not entitled to be paid;
- the Authority shall:
- 46.4.3 subject to Clause 46.5, where Clause 46.4.1 applies, promptly carry out receipting of such amount so that it is paid to the Supplier as soon as reasonably practicable; or
 - 46.4.4 where Clause 46.4.2 applies, be entitled to deduct such amount from the next payment due to the Supplier or, if no further amounts are due under the Agreement, the Authority shall be entitled to recover such amount from the Supplier as a debt due, in each case with interest on the relevant amount calculated in accordance with Clause 48 (Interest on Late Payment).
- 46.5 For the purposes of Clause 47 (Interest on Late Payment), the due date for payment of any amount to be paid to the Supplier pursuant to Clause 46.4.3, shall be deemed to be the Revised Due Date if as a consequence of a Dispute commenced by the Supplier pursuant to Clause 46.3, the due date for payment of such amount in accordance with Clause 45 (Invoicing and Payment) would otherwise be later than the Revised Due date.

47. TAXATION MATTERS

47.1 VAT on Payments

- 47.1.1 The amounts due under this Agreement are stated exclusive of VAT which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

47.1.2 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 47.1.2 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Business Days before the date upon which the tax or other liability is payable by the Authority.

47.2 Tax Non-compliance

47.2.1 The Supplier represents and warrants that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-compliance.

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

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

47.2.3 In the event that:

- a) the warranty given by the Supplier pursuant to Clause 47.2.1 is materially untrue;
- b) the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-compliance as required by Clause 47.2.2(a); or
- c) the Supplier fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Authority, are acceptable, the Authority shall be entitled to terminate this Agreement in accordance with Clause 52 (Early Termination) as a Supplier Event of Default.

47.2.4 For the avoidance of doubt, the obligation at Clause 62 (Ownership of Intellectual Property) also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws

and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.

47.2.5 In this Clause 47.2 (Tax Non-compliance) the following words and expressions shall have the following meanings:

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 made under section 132A of the Social Security Administration Act 1992.

“General Anti-Abuse Rule” means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others;

“Occasions of Tax Non-compliance” means:

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

“Relevant Tax Authority” means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established.

48. INTEREST ON LATE PAYMENT

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

49. RECOVERY OF SUMS DUE

- 49.1 Subject to Clause 78 (Liability), if at any time during the Term any sum of money is recoverable from or payable by the Supplier to the Authority under this Agreement or otherwise, the Authority, upon notice to the Supplier specifying the grounds for deduction and the amount of the deduction in relation to each ground, may deduct (or procure the deduction of) the same from any sum due to the Supplier (or which at any time thereafter may become due to the Supplier) under this Agreement or any other contract with the Authority or any other Government Body, or, if no further amounts are due under the Agreement, the Authority shall be entitled to recover such amount from the Supplier as a debt due. Any exercise by the Authority of its rights under this Clause 49 (Recovery of Sums Due) shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

50. EXCLUSION OF SUPPLIER SET OFF

- 50.1 Every payment payable by the Supplier to the Authority in connection with this Agreement shall be made in full without any set-off or counter claim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount (other than any deduction or withholding of tax as required by Applicable Law).

PART VIII– SUPERVENING EVENTS**51. BUSINESS CONTINUITY**

- 51.1 The Supplier's draft Business Continuity Plan is included in Schedule M (Business Continuity Plan).
- 51.2 Within three (3) Months of the Commencement Date, the Supplier shall submit to the Authority a revised Business Continuity Plan, updated using the principles set out in Schedule M (Business Continuity Plan).
- 51.3 Within one (1) Month of receiving the updated Business Continuity Plan the Authority may, acting reasonably:
- 51.3.1 accept the updated Business Continuity Plan; or
 - 51.3.2 request amendments to the updated Business Continuity Plan on the basis that the plan submitted by the Supplier does not align with the principles set out in Schedule M (Business Continuity Plan).
- 51.4 If amendments are required to the updated Business Continuity Plan in accordance with Clause 51.3.2, the Supplier shall make such amendments within two weeks of the Authority's request, following which if the Authority does not accept the further updated Business Continuity Plan, either Party may give notice of a Dispute.
- 51.5 The Supplier shall ensure that it is able to implement the Business Continuity Plan prepared in accordance with Clauses 51.2 and 51.3 throughout the Term in accordance with its terms.

PART IX– TERMINATION**52. EARLY TERMINATION****52.1 Termination for Supplier Event of Default**

52.1.1 Each of the following constitutes a “Supplier Event of Default”:

a) Supplier Breach of its Obligations

A material breach by the Supplier of its obligations under this Agreement including a breach which, in the reasonable opinion of the Authority materially and adversely affects the performance of the Services.

b) Failure to Remedy

A failure by the Supplier to remedy a breach specified in a Final Performance Warning Notice issued in accordance with Clause 52.6.2.

c) Insolvency

The occurrence of an Insolvency Event in respect of the Supplier.

d) Failure to satisfy Commencement Conditions

A failure to satisfy the Commencement Conditions in circumstances that constitute a Supplier Event of Default in accordance with Clause 3.3 (Failure to Satisfy Commencement Conditions).

e) Breach of Warranties or Representations

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

f) Breach of Assignment

A breach by the Supplier of Clause 15 (Assignment or Novation by the Supplier).

g) COI Compliance Regime

The Supplier is in breach of Clause 8 (Change of Control of the Supplier and Change in COI Associates) or Clause 23 (Conflicts of Interest) or there is a material breach of the COI Compliance Regime (and the COI Compliance Regime provides a right of termination) in respect of which the Authority determines is not capable of remedy in accordance with the terms of the COI Compliance Regime; or the Supplier has failed to remedy to the Authority's satisfaction in accordance with the terms of the COI Compliance Regime.

h) Prohibited Act

The Supplier is in breach of Clause 24 (Prohibited Acts).

i) Breach of Part XII Security

The Supplier is in breach of any obligation under Part XII Security.

The Supplier is in breach of any secrecy or security obligation imposed by any other contract with the Crown.

j) Breach of certain IPR

Any breach or infringement by the Supplier of any Third Party IPR which will or may damage or be detrimental to the reputation of the Authority.

Any breach or infringement by the Supplier of any Third Party IPR which will or may prevent or deter the government of any other country from entering into any future agreement or arrangement with the Authority relating to research, development, production, supply or operations.

k) Breach of Sub-contracts

A breach by the Supplier of Clause 26.2 (Obligations of the Supplier)

l) Non-payment

The failure by the Supplier to pay to the Authority any amount which is due and payable under this Agreement where the Authority has given sixty (60) days' notice requiring such amount to be paid, unless such amount is the subject of a bona fide Dispute.

m) Tax Non-compliance

An Occasion of Tax Non-compliance, in the circumstances set out in Clause 47.2

n) Breach of Non-Solicitation

A breach by the Supplier of the non-solicitation provisions in Clause 43 (Non Solicitation).

o) Breach of Data Protection and Confidentiality

A breach by the Supplier of Clause 70 (Data Protection) or Clause 71 (Confidentiality).

p) Liability Cap Excess

At any time the provisions of Clause 78 (Liability) apply so as to limit or reduce the amount for which the Supplier would otherwise have been liable. If this Supplier Event of Default occurs, or is likely to occur, the Parties may discuss what course of action other than termination to take (if any), but any agreement shall be in the absolute discretion of the Authority (and a failure to agree may not be referred to be resolved in accordance with Clause 57 (Dispute Resolution Procedure)).

q) Persistent Red KPI Failures

Any KPI Failure arises because the performance of the KPI has been assessed as “RED” in accordance with the Performance Regime and continues for the shorter of:

1. Three (3) consecutive KPI Periods; or
2. Nine (9) Months.

52.2 Material Breach Notice

52.2.1 Subject to Clause 52.4 (Remediable Breach), if a Supplier Event of Default has occurred, the Authority may terminate this Agreement by serving notice on the Supplier (a “Material Breach Notice”) stating:

- a) that the Authority is terminating this Agreement for Supplier Event of Default;
- b) the type and nature of Supplier Event of Default that has occurred, given reasonable details; and
- c) that this Agreement shall terminate on the date specified in the Material Breach Notice, provided such date shall be a minimum of one (1) Month from the date of receipt by the Supplier of the Material Breach Notice.

52.3 Irremediable Breach

52.3.1 If there has been a Material Breach Notice in relation to a Supplier Event of Default that is not a Remediable Breach (provided that the Authority must act reasonably if it decides that a Supplier Event of Default under limb (a), (f), (i), (j), (l), (m), (n), (o) or (p) of Clause 52.1 (Supplier Events of Default) is not a Remediable Breach), this Agreement shall terminate on the date determined in accordance with Clause 2 (Governing Law).

52.4 Remediable Breach

52.4.1 If there has been a Supplier Event of Default under limb (a), (f), (i), (l), (m) or (n) of Clause 52.1 (Supplier Events of Default) and the Authority decides that such breach is capable of remedy (a “**Remediable Breach**”), the Material Breach Notice shall require the Supplier (at the Authority’s discretion) either to:

- (A) remedy the breach within twenty (20) Business Days of the date of the Material Breach Notice (or such longer period as may be agreed by the Authority in its absolute discretion); or
- (B) propose within twenty (20) Business Days of the date of the Material

Breach Notice a programme to remedy the breach (the “**Remediation Programme**”), such programme to be agreed in accordance with Clause 52.5 (Remediation Programme).

52.4.2 If:

- (A) a Remediable Breach is not remedied within the period specified in the Material Breach Notice; or
- (B) the Supplier fails to achieve any element of the Remediation Programme in respect of a Remediable Breach (including any milestones not being met by dates specified therein) or fails to remedy the Remediable Breach within the date specified in the Remediation Programme, or the Remediation Programme is rejected by the Authority as not being reasonable pursuant to Clause 52.5 (Remediation Programme) and the Dispute Resolution Procedure does not find against that rejection,

then the Authority may serve a further notice on the Supplier (a “**Termination Notice**”) terminating this Agreement on the date specified in the Termination Notice, provided such date shall be a minimum of one (1) month from the date of receipt by the Supplier of the Termination Notice.

52.5 Remediation Programme

- 52.5.1 The Remediation Programme shall specify in detail how the Supplier proposes to remedy a Remediable Breach, the steps required to remedy the Remediable Breach (including Milestones to be met by specific dates), the anticipated costs and other consequences associated with the remediation and the latest date by which the Supplier anticipates that the Remediable Breach will be remedied.
- 52.5.2 Where the Supplier proposes a Remediation Programme in accordance with Clause 52.5 the Authority shall within twenty (20) Business Days from the date of receipt of the proposed Remediation Programme notify the Supplier whether the Authority accepts the proposed Remediation Programme (such acceptance not to be unreasonably withheld).
- 52.5.3 Where the Authority notifies the Supplier that it does not accept the Remediation Programme, the Authority and the Supplier shall endeavour within the following twenty (20) Business Days to agree any necessary amendments to the Remediation Programme. In the absence of agreement within such twenty (20) Business Day period, the question of whether or not the Authority’s withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 57 (Dispute Resolution Procedure).

52.6 Termination for Poor Performance Breach

52.6.1 Where there is a breach of this Agreement by the Supplier which does not otherwise give rise to a Supplier Event of Default then the Authority may serve a notice on the Supplier (the "Performance Warning Notice"):

- a) specifying that it is a formal warning notice;
- b) giving reasonable details of the breach and specifying the Authority's concerns;
- c) stating that such breach may become a Supplier Event of Default pursuant to limb (b) of Clause 52.1.1 if it recurs and may result in a termination of this Agreement; and
- d) specifying what steps, if any, the Authority requires the Supplier to take to remedy the breach including any specific deadline(s) (not being less than twenty (20) Business Days after the date of receipt by the Supplier of the Performance Warning Notice).

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

- a) specifying that it is the final warning notice;
- b) stating that the breach specified or a substantially similar breach has been the subject of a Performance Warning Notice; and
- c) stating that if such breach continues beyond any specific deadline (not being less than twenty (20) Business Days after the date of receipt by the Supplier of the Final Warning Notice) or recurs one (1) or more times within three (3) Months after the date of receipt by the Supplier of the Final Performance Warning Notice, the same shall constitute a Supplier Event of Default under limb (b) of Clause 52.1.1 (Termination for Supplier Events of Default).

52.7 Requirement to Notify

52.7.1 The Supplier shall notify the Authority in writing (which for this purpose does not include email) promptly on becoming aware of the occurrence of any event or circumstance which may give the Authority the right to terminate this Agreement under this Clause 52 (Early Termination) and shall provide to the Authority all information about the relevant event or circumstance which the Authority (acting reasonably) requires.

52.8 Voluntary Termination by the Authority

52.8.1 The Authority shall be entitled to terminate this Agreement in its entirety at any time and for any reason on giving reasonable notice to the Supplier, such notice being not less than thirty (30) days (and such notice to take effect on the date of receipt by the Supplier).

52.9 Termination for Change of Control of Supplier

52.9.1 The Authority may terminate this Agreement with immediate effect by written notice to the Supplier (such notice to take effect on the date of receipt by the Supplier) if there is a change of control of the Supplier that is required to be notified to the Authority pursuant to Clause 8 (Change of Control of the Supplier and Change in COI Associates).

53. EARLY TERMINATION OF APPROVED TASKING ORDERS

53.1 The Authority may terminate an Approved Tasking Order by giving notice at any point provided that it gives the Supplier five (5) Business Days notice.

53.2 The Authority may on giving five (5) Business Days notice, terminate an Approved Tasking Order where the Supplier is in material breach of such Approved Tasking Order.

53.3 Written confirmation of the termination request will be submitted by the Authority Demander or Tasking Order Delivery Manager (or delegate) to the ADT Commercial Lead who will monitor the termination of the Task.

54. CONSEQUENCES OF TERMINATION OR EXPIRY

54.1 Accrued Rights and Obligations and Survivorship

54.1.1 On termination or expiry of this Agreement, the Authority may instruct the Supplier to complete any or all Supplier Deliverables set out in an Approved Tasking Order. If the Authority so instructs, the Parties' obligations set out in the relevant Approved Tasking Order shall continue to apply regardless of the termination of this Agreement;

54.1.2 The termination or expiry of this Agreement for any reason:

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

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

- (C) shall not affect:
- a) Clause 1 (Definitions and Interpretations)
 - b) Clause 7 (Transparency);
 - c) Clause 16 (Severability);
 - d) Clause 17 (Formal Amendments to the Agreement);
 - e) Clause 19 (No Partnership, Agency or Employment Relationship);
 - f) Clause 20 (Counterparts);
 - g) Clause 21.2 (Entire Agreement);
 - h) Clause 24.3 (Prohibited Acts);
 - i) Clause 35.2 (Retention of Records);
 - j) Clause 43 (Non-solicitation)
 - k) Clause 45 (Invoicing and Payment);
 - l) Clause 46 (Disputed Amounts);
 - m) Clause 47 (Taxation Matters);
 - n) Clause 48 (Interest on Late Payment);
 - o) Clause 49 (Recovery of Sums Due);
 - p) Clause 50 (Exclusion of Supplier Set Off);
 - q) Clause 54 (Consequences of Termination or Expiry);
 - r) Clause 56 (Post Termination or Expiry Obligations to Assist);
 - s) Clause 57 (Dispute Resolution Procedure);
 - t) Clause 62 (Ownership of Intellectual Property);
 - u) Clause 64 (Licence of Supplier IPR);
 - v) Clause 65 (Licence and sub-licence of Third Party IPR provided by the Supplier)
 - w) Clause 71 (Confidentiality);
 - x) Clause 74 (Disclosure);
 - y) Clause 75 (Supplier Right to Request Confidentiality);
 - z) Clause 76 (Freedom of Information Act);
 - aa) Clause 77 (Insurance);
 - bb) Clause 78 (Liability);
 - cc) Schedule L (Dispute Resolution Procedure);
 - dd) Schedule E (Payment and Performance Management);
 - ee) Paragraph 1.12 of Schedule F (COI Compliance Regime);

- ff) Paragraph 1.13 of Schedule F (COI Compliance Regime);
 - gg) Paragraph 1.14 of Schedule F (COI Compliance Regime);
 - hh) Paragraph 2.1 of Schedule F (COI Compliance Regime);
 - ii) Paragraph 2.3.2 of Schedule F (COI Compliance Regime);
 - jj) Paragraph 4.3 of Schedule F (COI Compliance Regime);
 - kk) Paragraph 5.3 of Schedule F (COI Compliance Regime);,
 - ll) Paragraph 5.4 of Schedule F (COI Compliance Regime);
 - mm) Paragraph 6.1 of Schedule F (COI Compliance Regime);
 - nn) without limiting Clause (C)(KK) to Clause (C)(SS) (inclusive), Paragraphs 4.1 and 4.2 of Schedule F (COI Compliance Regime) shall survive the termination or expiry of this Agreement for a period of eighteen (18) Months;
 - oo) Schedule G (Supplier's Commercially Sensitive Information);
 - pp) Paragraphs 2.6, 2.11 and 8 of Schedule H (Management of Engaged Personnel);
 - qq) Schedule I (Termination Payments);
 - rr) Schedule K (Insurances); and
 - ss) Schedule O (Exit Plan);
- (D) shall not affect any indemnity given under the terms of this Agreement; and
- (E) shall not affect any provision of this Agreement (including any provision in Schedule F (COI Compliance Regime), Schedule H (Management of Engaged Personnel) and Schedule N (Transfer Regulations)) that expressly states that it will continue to have effect after the expiry or termination of this Agreement.

54.2 Termination Payment

- 54.2.1 In the event of termination of this Agreement or an Approved Tasking Order in accordance with Clauses 52 and 53 the provisions of Schedule I (Termination Payments) shall apply.
- 54.2.2 Any payment required by the Authority, in accordance with this Clause 54.2 (Termination Payment), to the Supplier under Schedule I (Termination Payments) shall be in full and final satisfaction of any claim by the Supplier for Losses arising as a result of termination of the Agreement and/or Approved Tasking Order and the Supplier shall have no right (whether in contract, tort (including negligence), statute, for deliberate repudiatory breach or otherwise) to make any further claim against the Authority as a result of such termination.

55. STEP-IN RIGHTS

- 55.1 If the Authority reasonably believes that it needs to take action in connection with the Supplier Deliverables:
- 55.1.1 as a result of a Default by the Supplier;
 - 55.1.2 because a serious risk exists to the health or safety of persons or property or to the environment;
 - 55.1.3 to discharge a statutory duty; and/or
 - 55.1.4 because an emergency has arisen,
- then the Authority shall be entitled to take action in accordance with Clauses 55.2 to 55.6.
- 55.2 If Clause 55.1 applies and the Authority wishes to take action, the Authority shall notify the Supplier in writing of the following:
- 55.2.1 The action it wishes to take;
 - 55.2.2 The reason for such action;
 - 55.2.3 the date it wishes to commence such action;
 - 55.2.4 the time period which it believes will be necessary for such action; and
 - 55.2.5 to the extent practicable, the effect on the Supplier and its obligation to provide the Supplier Deliverables during the period such action is being taken.
- 55.3 Following service of the notice referred to in Clause 55.2 the Authority shall take such action as notified under Clause 55.2.1 and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Supplier shall give all reasonable assistance to the Authority while it is taking such Required Action.
- 55.4 If the Supplier is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Supplier from providing any part of the Supplier Deliverables, the Supplier shall be relieved from its obligations to provide such part of the Supplier Deliverables.
- 55.5 If the Required Action is taken as a result of a breach of the obligations of the Supplier under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Supplier from providing any part of the Supplier Deliverables:

- 55.5.1 the Supplier shall be relieved of its obligations to provide such part of the Supplier Deliverables; and
 - 55.5.2 the Supplier shall reimburse the Authority on demand for all costs reasonably and properly incurred by the Authority (including administration and management costs) in taking the Required Action.
- 55.6 Where the Required Action has been taken otherwise than as a result of a breach by the Supplier, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Supplier against all direct losses where it fails to do so.

56. POST TERMINATION OR EXPIRY OBLIGATIONS TO ASSIST

56.1 Exit Plan

- 56.1.1 The Supplier shall develop an exit plan in accordance with the principles set out in Schedule O (Exit Plan) and the Parties shall use their reasonable endeavours to agree the form of such exit plan within three months of the Commencement Date of this Agreement. Once agreed, such exit plan shall be the "Exit Plan" for the purposes of this Agreement.
- 56.1.2 All costs incurred in developing, updating and implementing the Exit Plan shall be payable by the Supplier.

56.2 Obligation to Assist

- 56.2.1 Following termination or expiry of this Agreement, the Supplier shall continue to implement the Exit Plan to ensure the orderly and efficient transition of all activities undertaken or to be undertaken by the Supplier and Supplier Related Parties under this Agreement to the Authority and Authority Related Parties and, for a period of one (1) Month following the Expiry Date or Termination Date (as applicable), the Supplier and Supplier Related Parties shall co-operate with all reasonable instructions of the Authority in connection with this transition. The Supplier shall not be entitled to charge a fee for its costs in complying with this Clause 56.2 (Obligation to Assist).

PART X– DISPUTE RESOLUTION PROCEDURE

57. DISPUTE RESOLUTION PROCEDURE

- 57.1 Disputes arising out of or in connection with this Agreement, whether or not expressly stated to be subject to this Clause 57 (Dispute Resolution Procedure) shall be resolved in accordance with the Dispute Resolution Procedure at Schedule L (Dispute Resolution Procedure).
- 57.2 Neither Party shall commence any Legal Proceedings until it has followed the Dispute Resolution Procedure, provided that nothing in the Dispute Resolution Procedure shall prevent a Party from seeking interim or interlocutory relief in any court.
- 57.3 Notices given in respect of a Dispute shall comply with Clause 12.1.2 (Notices) and shall not be given by email.

PART XI – SECURITY**58. SECURITY MEASURES****58.1 Definition**

58.1.1 In this Clause 58 Security Measures:-

- a) 'Secret Matter' means any matter connected with the Agreement, or its performance which is designated by the Authority in the security aspects letter annexed to the Agreement or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
- b) 'Employee' shall include any person who is an employee or director of the Supplier or who occupies the position of a director of the Supplier, by whatever title given.
- c) 'Security Policy Framework' means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

58.2 The Official Secrets Acts

58.2.1 The Supplier shall:

- a) take all reasonable steps to ensure that all Employees engaged on any work in connection with the Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Agreement; and
- b) if directed by the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Agreement and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

58.3 Security Measures

58.3.1 Unless the written authorisation of the Authority to do otherwise is agreed, neither the Supplier nor any of the Employees shall, either before or after the completion or termination of the Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

- a) who is not a British citizen;

- b) who does not hold the appropriate authority for access to the protected matter;
- c) in respect of whom the Authority has notified the Supplier in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- d) who is not an Employee of the Supplier;
- e) who is an Employee of the Supplier and has no need to know the information for the proper performance of the Agreement.

58.4 Unless the Supplier has the written authorisation of the Authority to do otherwise, the Supplier and the Employees shall, both before and after the completion or termination of the Agreement, take all reasonable steps to ensure that:

- 58.4.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Agreement;
- 58.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request, is delivered up to the Authority who shall be entitled to retain it.
- 58.4.3 A decision of the Authority on the question of whether the Supplier has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

58.5 The Supplier shall:

58.5.1 provide to the Authority:

- a) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Clause 58.4.2;
- b) upon request, such information as the Authority may from time to time require so as to be satisfied that the Supplier and the Employees are complying with his obligations under this Clause, including the measures taken or proposed by the Supplier so as to comply with his obligations and to prevent any breach of them;
- c) full particulars of any failure by the Supplier and the Employees to comply with any obligations relating to Secret Matter arising under this Clause immediately upon such failure becoming apparent;

58.5.2 ensure that, for the purpose of checking the Supplier's compliance with the obligation in Clause 58.4.2, a representative of the Authority shall be entitled, at any time, to enter and inspect any premises used by the Supplier, which are in any way connected with the Agreement, and inspect any document or thing in any such premises which is being used, or made for

the purposes of the Agreement. Such representative shall be entitled to all such information as they may reasonably require.

58.6 If at any time either before or after the completion or termination of the Agreement, the Supplier or any of the Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Supplier shall forthwith inform the Authority of the matter with full particulars thereof.

58.7 Subcontracts - If the Supplier proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Supplier shall:

58.7.1 submit for approval of the Authority the name of the proposed subcontractor, a statement of the work to be carried out and any other details known to the Supplier which the Authority shall reasonably require;

58.7.2 incorporate into the sub-contract the terms of such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Supplier" and "Second Party" shall mean the "Sub- Contractor";

58.7.3 inform the Authority immediately he becomes aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the sub-contract.

58.8 Termination

58.8.1 The Authority shall be entitled to terminate the Agreement immediately if:

(A) the Supplier is in breach of any obligation under this Clause; or

(B) the Supplier is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

58.9 If the Authority considers the circumstances of the breach jeopardise the **secrecy** or security of the Secret Matter, the Authority is entitled to claim such damages as may have been sustained as a result of the Supplier's breach of this Clause.

59. OFFICIAL-SENSITIVE SECURITY REQUIREMENTS

59.1 In this Clause "Information" means information recorded in any form disclosed or created in connection with the Agreement.

59.2 The Supplier shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the Security Aspects Letter attached to the Agreement, in accordance with the official security clauses contained in the Agreement or annexed to the Security Aspects Letter.

59.3 The Supplier shall include the requirements and obligations set out in Clause 59.2 in any Sub-contract placed in connection with or for the purposes of the Agreement which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-contractor. The Supplier shall also include in the Sub-contract a requirement for the Sub-contractor to flow the requirements of this clause to its subcontractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

60. SECURITY ASPECTS LETTER

60.1 The Authority shall advise the Supplier of the clauses applicable to security in each Approved Task Order when it issues the Approved Task Order to the Supplier:

60.1.1 the Authority shall include the "OFFICIAL, OFFICIAL-SENSITIVE and SECRET Security Condition for Contracts" in each Approved Task Order where security related information classified as OFFICIAL, OFFICIAL-SENSITIVE or SECRET forms part of that Approved Task Order; and

60.2 The Authority may amend the conditions relating to Clause 58 (Security Measures) in the event of the Government changing the security classification system.

61. CYBER

61.1 Definitions

61.1.1 In this Clause the following words and expressions shall have the meanings given to them in Schedule A (Definitions), except where the context requires a different meaning.

61.2 Authority Obligations

61.2.1 In accordance with this Clause 61.2, the Authority can confirm that the Cyber Risk Level for this Programme Delivery Partner Agreement is LOW.

61.2.2 The Authority shall:

- a) determine the Cyber Risk Level appropriate to this Agreement and, where the Supplier has not already been notified of the Cyber Risk level prior to the date of this Agreement, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the Supplier as soon as is reasonably practicable; and
- b) notify the Supplier as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Agreement.

61.3 Supplier Obligations

61.3.1 The Supplier shall, and shall procure that its Sub-contractors shall:

- a) comply with DEFSTAN 05-138;
- b) complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Supplier's supply chain which has or may have an impact on the Cyber Risk Level of this Agreement or on receipt of any reasonable request by the Authority;
- c) carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Agreement commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;
- d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause in accordance with Good Industry Practice provided always that where there is a conflict between the Supplier's obligations under 61.3.1(a) above and this 61.3.1(d) the Supplier shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- e) comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- f) notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Supplier's NSA/DSA, and in the case of a Sub-contractor also notify the Supplier, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;
- g) in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Supplier's NSA/DSA in the circumstances and taking into account the Cyber Risk Level; and
- h) consent to the Authority recording and using information obtained in relation to the Agreement for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or

elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Supplier and / or Sub-contractor as appropriate; and

- i) include provisions equivalent to 61.7.1 of this Clause 61 in all Sub-contracts imposing provisions equivalent to this Clause 61.3 (the “equivalent provisions”) and, where a Sub-contractor breaches terms implementing this Clause in a Sub-contract, the Supplier shall, and shall procure that its Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract:
 - i. notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority’s views into consideration; and
 - ii. have regard to the equivalent provisions.

Provided always that where the Supplier has notified the Authority that it or one or more of its Sub-contractors cannot comply with 61.3.1(a) to 61.3.1(l) above the Authority and Supplier will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Supplier, the Supplier shall, and shall procure that its Sub-contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 61.3.1(a) to 61.3.1(l) above shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the provisions of Clause 57 (Dispute Resolution Procedure) or any agreed alternative dispute resolution procedure shall apply.

61.4 Management Of Sub-Contractors

61.4.1 The Authority agrees that the Supplier shall be entitled to rely upon the self-certification by a Sub-contractor of its compliance with its obligations pursuant to Clause 61.3.1. In the event that a Sub-contractor is found to be in breach of its obligations in Clause 61.3.1, and where the Supplier has relied upon the Sub-contractor’s self-certification, the Supplier shall not be held to be in breach of this Clause.

61.4.2 Where the Supplier becomes aware that a Sub-contractor is not complying with its obligations, the Supplier shall notify the Authority and provide full details of the Sub-contractor’s non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-contract having regard to Clause 61.3.1.(l).

61.4.3 Having regard to the Authority’s views, the Supplier shall take all reasonable measures to address any non-compliance of a Sub-contractor in accordance with the reasonable timescales required by the Authority. Where the

Supplier fails to do so, this shall amount to a breach of this Clause and the provisions of c) or 61.7.2 as appropriate shall apply.

61.4.4 The Supplier shall, and shall procure that its Sub-contractors shall, include provisions equivalent to this Clause 61.4.4 in all Sub-contracts which flow down the obligations set out in Clause 61.3.1 of this Agreement.

61.5 Records

61.5.1 The Supplier shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until six (6) years after termination or expiry of this Agreement, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

- a) details of all MOD Identifiable Information relating to the Supplier Deliverables provided under this Agreement; and
- b) copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Supplier and/or Sub-contractor.

61.5.2 The Supplier shall, and shall ensure that any Sub-contractor shall on request provide the Authority, the Authority's representatives and/or the Supplier's NSA/DSA such access to those records as may be required in connection with this Agreement.

61.6 Audit

61.6.1 Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Supplier agrees, and shall procure that its Sub-contractors agree, that the Authority and its representatives, in coordination with the Supplier's NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and/or the Supplier's NSA/DSA may, not more than twice in any Contract Year and for a period of six (6) years following the termination or expiry of this Agreement, whichever is the later, conduct an audit for the following purposes:

- a) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
- b) to review the Supplier's and/or any Sub-contractor's compliance with its obligations under this Clause; and
- c) to review any records created during the provision of the Supplier Deliverables, including but not limited to any documents, reports and

minutes which refer or relate to the Supplier Deliverables for the purposes of 61.6.1(a) and 61.6.1.(b) above.

- 61.6.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier and/or Sub-contractor or delay the provision of the Supplier Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.
- 61.6.3 The Supplier shall, and shall ensure that any Sub-contractor shall on demand provide the Authority and any relevant regulatory body, including the Supplier's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- a) all information requested by the Authority within the permitted scope of the audit;
 - b) reasonable access to any Sites controlled by the Supplier or any Associated Company and any Sub-contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Agreement and, where such Sites and/or equipment are outwith the control of the Supplier, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
 - c) access to any relevant staff.
- 61.6.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days' notice of its intention to conduct an audit.
- 61.6.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit identifies a material breach of the terms of this Clause by the Supplier and/or Sub-contractor in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

61.7 Breach of Obligations

- 61.7.1 In exercising its rights or remedies under Clause 58.7 (Security Measures), the Authority shall:
- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Agreement; and
 - b) give all due consideration, where appropriate, to action other than termination of the Agreement, including but not limited to a remedial period if this is appropriate in all the circumstances.

- c) Where the Cyber Risk Level of this Agreement is assessed to be a moderate or high, and the Supplier breaches the terms of this Clause 61.7, the Authority shall be entitled:
- d) to terminate the Agreement (whether in whole or in part) and to claim damages in accordance with Clause 52 (Early Termination) as though such breach is a material breach; and
- e) where the Agreement has not been terminated, to recover from the Supplier any other loss sustained in consequence of any breach of this Clause 61.7, subject to any provision which is agreed elsewhere in this Agreement.

61.7.2 Where the Cyber Risk Level of this Agreement is assessed to be very low or low, and the Supplier breaches the terms of this Clause 61.7, the Authority shall be entitled:

- a) to recover from the Supplier the amount of any loss sustained in consequence of any breach of this Clause 61.7, subject to any provision which is agreed elsewhere in this Agreement; and
- b) where the Supplier does not comply with any reasonable instructions issued by the Authority or the Supplier's NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Agreement (whether in whole or in part) and to claim damages in accordance with Clause 65 (Licence and Sub-Licence of Third Party IPR provided by the Supplier) as though such breach is a material breach.

61.7.3 Where the Supplier commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause 61.7 the Authority shall be entitled to terminate this Agreement (whether in whole or in part) and to claim damages in accordance with Clause 52 (Early Termination) as though such breach is a material breach.

61.8 **General**

61.8.1 On termination or expiry of this Agreement the provisions of this Clause 61 excepting 61.3.1(b) and 61.3.1.(c) above shall continue in force so long as the Supplier and/or and Sub-contractor holds any MOD Identifiable Information relating to this Agreement.

61.8.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 61.8 that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

- 61.8.3 The Supplier agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Fees for any associated increase or decrease in costs and the Supplier may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level provided always that the Supplier shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Agreement and reasonable in all the circumstances.
- 61.8.4 Subject to 61.8.3 above, where the Supplier seeks such adjustment or extension, the Authority will proceed in accordance with Clause 17 (Formal Amendments to the Agreement) or any agreed alternative change control procedure to determine the request for adjustment or extension. The Supplier must deliver a Supplier Proposal to the Authority within 8 weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority notice of change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the Supplier Proposal is rejected. In the event that the Supplier does not agree with the Authority's determination, then the provisions of Clause 57 (Dispute Resolution Procedure) or any agreed alternative dispute resolution procedure shall apply.
- 61.8.5 The Supplier shall not recover any costs and/or other losses under or in connection with this Clause where such costs and/or other losses are recoverable or have been recovered by the Supplier elsewhere in this Agreement or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Supplier is able to or has recovered such sums in any other provision of this Agreement or has recovered such costs and/or losses in other contracts between the Supplier and the Authority or with other bodies.

PART XII– INTELLECTUAL PROPERTY, INFORMATION AND DISCLOSURE**62. OWNERSHIP OF INTELLECTUAL PROPERTY**

- 62.1 The Supplier shall not by virtue of this Agreement acquire any right, title or interest in any IPR owned by or licensed to the Authority (including Authority IPR) other than under the licences expressly set out in this Agreement.
- 62.2 The Authority shall not by virtue of this Agreement acquire right, title or interest in any Supplier Background IPR, or any Third Party IPR other than under the licences expressly set out in this Agreement.
- 62.3 All IPR created or developed by or on behalf of the Supplier (including by any Supplier Related Party or any COI Associate) under or for the purposes of this Agreement or the Services, and any modifications, updates and developments of Authority IPR or of Third Party IPR supplied by the Authority to the Supplier or any Supplier Related Party for the purpose of this Agreement that (in either case) are created by or on behalf of the Supplier (including by any Supplier Related Party or any COI Associate) shall be owned by and vest in the Authority (the "Authority Foreground IPR").
- 62.4 The Supplier hereby assigns (or shall procure the assignment of) all right, title and interest in any present and future Authority Foreground IPR to the Authority with full title guarantee. The Supplier shall (and shall procure that any Supplier Related Party or any COI Associate shall) execute all documents and do all such acts and things as the Authority may reasonably require to give full effect to the terms of Clauses 62.3 and this Clause 62.4 and to perfect the Authority's title to Authority Foreground IPR. The Supplier shall mark any copyright work bearing or embodying any Authority Foreground IPR or on which Authority Foreground IPR is recorded with the legend "© Crown-owned copyright [insert the year of generation of the work]". The Supplier shall procure the waiver by any Supplier Related Party or any COI Associate of any moral rights that they may have in the Authority Foreground IPR.

63. LICENCE OF AUTHORITY IPR

- 63.1 The Authority hereby grants to the Supplier, and to each Supplier Related Party, for the Term only, a non-exclusive, royalty-free, non-transferable, sub-licensable licence to use all such Authority IPR to the extent necessary for the purpose of the Supplier's performance of this Agreement and the Services. The Authority may at its discretion and by written notice to the Supplier impose restrictions on the Supplier's or any Supplier Related Party's use of that IPR to specific purposes within the scope of this Agreement and the Services.
- 63.2 The Authority gives no warranty as to the suitability of any Authority IPR for the purpose of the Supplier or any Supplier Related Party performing the obligations of the Supplier under this Agreement and the Services. The Supplier shall not (and shall

procure that any Supplier Related Party shall not) do anything which will prejudice the rights of ownership by the Crown or the Authority of any of the Authority IPR.

- 63.3 The Supplier and the Supplier Related Parties shall have no other rights to use the Authority IPR other than as set out in this Agreement.

64. LICENCE OF SUPPLIER IPR

- 64.1 The Supplier hereby grants (and shall procure that any Supplier Related Party or any COI Associate grants) to the Authority a perpetual, irrevocable, non-exclusive, royalty-free, worldwide, transferable licence or sub-licence to grant (with the right to grant sub-licences) to use, copy, modify and disclose the Supplier Background IPR to:

- 64.1.1 receive, use and otherwise have the full benefit of this Agreement and the Services and any replacement, substitute or follow-on services;
- 64.1.2 operate, perform, maintain, modify, update and develop the Services or any part of them, and to provide or receive replacement, substitute or follow-on services (including where provided by a replacement Supplier);
- 64.1.3 enable the Authority to receive, use and obtain the full benefit of the Supplier Deliverables and any IPR therein;
- 64.1.4 operate, perform, maintain, modify, update and develop the services, duties, obligations and functions of the Authority (including the procurement of defence equipment, providing support and logistics and management of equipment, (including support and logistics) through its life);
- 64.1.5 perform any review, audit, or legal duty (statutory or otherwise);
- 64.1.6 integrate the Services with the Authority's procurement, operation and support of Authority assets with which the Services are reasonably associated at any time during or after the Term;
- 64.1.7 conduct any UK governmental purpose which may be connected with the use of the Services;
- 64.1.8 The Supplier and any Supplier Related Party will not sell any Contract Software unless the Authority agrees otherwise,
- 64.1.9 (in addition to the provisions of Clause 64.1.2) run a competition in relation to the provision of replacement, substitute or follow-on services.

- 64.2 The Supplier shall not (and shall procure that any Supplier Related Party and any COI Associate shall not) assign or otherwise transfer or dispose of any Supplier

Background IPR to any Third Party during or after the Term unless it preserves for the Authority the rights granted to it under this Agreement.

- 64.3 The Authority shall be entitled to sub-license the rights to use, copy, modify and disclose the Supplier Background IPR set out in Clause 64.1 to any Authority Related Party for any of the purposes referred to in Clauses 64.1.1 to 64.1.9.
- 64.4 The licences and rights referred to in this Clause 64 (Licence of Supplier IPR) shall survive any expiry or termination, for whatever reason, of this Agreement.

65. LICENCE AND SUB-LICENCE OF THIRD PARTY IPR PROVIDED BY THE SUPPLIER

- 65.1 The Supplier shall promptly notify the ADT Commercial Lead whenever the Supplier or any Supplier Related Party requires use of Third Party IPR, other than COTS IPR, for the purpose of providing the Services.
- 65.2 The Supplier shall ensure that all licences entered into with Third Parties for the right to use Third Party IPR, notified in accordance with Clause 65.1, shall be held either in its own name or that of the relevant Supplier Related Party as licensee.
- 65.3 In respect of all licences referred to in Clause 65.2, the Supplier shall ensure that each licence either:
- 65.3.1 grants the Supplier or Supplier Related Party the right to grant a perpetual, irrevocable and transferable sub-licence of the third party IPR to the Authority (with the right to grant sub-sub-licences) that will allow the Authority to use, copy, modify and disclose the Third Party IPR (or to any other person nominated by the Authority); or
 - 65.3.2 grants to the Authority a non-exclusive, perpetual and irrevocable right (with the right to grant sub-licences) to the Third Party IPR, in each case, that will allow the Authority to use, copy, modify and disclose the Third Party IPR to a substantially similar extent to that licensed to the Supplier or Supplier Related Party and for the purposes set out in Clause 64.1.1 to 64.1.9.
- 65.4 Where the Supplier is unable to obtain the terms set out in Clause 65.3 from any Third Party it shall obtain the Authority's consent before entering into a licence with such Third Party for use of the Third Party IPR (such consent shall be entirely at the Authority's discretion) or, alternatively, the Authority may enter into a direct licence with such Third Party with a right for the Supplier or any Supplier Related Party to use such Third Party IPR on the Authority's behalf.
- 65.5 Any royalties or other fees payable in obtaining or exercising any licence or sub-licence of Third Party IPR, or any fees which are incurred using any right granted under them in accordance with the terms and conditions of this Agreement, shall be for the account of the Supplier.

- 65.6 On the Termination Date or the Expiry Date (as applicable) the Supplier shall procure the novation, at its own expense, of all licences of Third Party IPR obtained by the Supplier in accordance with Clause 65.2 to the Authority (or, at the Authority's request, to an Authority Related Party).
- 65.7 Prior to the Termination Date or the Expiry Date (as applicable), at the Authority's request the Supplier shall procure a transferable, perpetual, irrevocable, non-exclusive, licence for the Authority to use, disclose and to sub-licence the Third Party IPR for the purposes set out in Clause 64.1.1 to 64.1.9 and the provisions in Clause 65.5 shall apply to any such licence.

66. PROTECTION OF INFORMATION

- 66.1 Notwithstanding Clause 38 (Government Furnished Assets and Supplier Assets), in respect of all information, documents and other materials in any form and any other articles used for the purposes of this Agreement, either or both relating to or bearing in embodying any Authority IPR, Third Party IPR or Supplier Background IPR, or on which any such IPR is recorded, the Supplier shall:
- 66.1.1 mark that information with a notice regarding confidentiality or ownership as the Authority may notify from time to time and shall not delete or modify any copyright notices contained within the information, documents, other materials or articles;
 - 66.1.2 ensure the back-up and storage in safe custody of all data, materials and documents in accordance with JSP 440, those back-ups to be available to the Authority on reasonable request; and
 - 66.1.3 promptly restore the items referred to in Clause 66.1.2 if they are lost or corrupted.

67. SUPPLIER'S IPR INDEMNITY

- 67.1 The Supplier shall indemnify the Authority (and the Authority Related Parties) fully from and against all claims arising out of or in connection with any actual or alleged infringement of Third Party IPR arising from the performance of this Agreement or the Services by the Supplier or by any Supplier Related Party or from the Authority's receipt and use of the Services or the exercise of its rights granted under this Agreement (an "IPR Claim").
- 67.2 If, in respect of an IPR Claim, any part of the Services, the Supplier Background IPR, the Authority Foreground IPR or anything else provided by the Supplier (or Supplier Related Parties or any COI Associate) under this Agreement is alleged to or is held to constitute an infringement of Third Party IPR (an "Infringing Part"), the Authority may require the Supplier to:

- 67.2.1 procure for the Authority the right to continue using the Infringing Part;
 - 67.2.2 modify the Infringing Part so that it is non-infringing, without materially detracting from its overall functionality, performance or compatibility or from the overall performance of the Supplier's obligations under this Agreement; or
 - 67.2.3 replace the Infringing Part with other non-infringing items or services that have an equivalent functionality, performance and compatibility.
- 67.3 The indemnity in Clause 67.1 shall not apply in respect of a claim to the extent that it arises from:
- 67.3.1 the use of Supplier Background IPR or Third Party IPR by the Authority otherwise than in accordance with the terms of this Agreement and any applicable licence or sub-licence conditions provided that these have been notified to the ADT Commercial Lead on the grant of the applicable licence or sub-licence; or
 - 67.3.2 any modification or development carried out by or for the Authority to any item supplied by the Supplier (or Supplier Related Parties) under this Agreement, where such modification or development is not authorised or approved by the Supplier.
- 67.4 Subject to Clause 67.5, in relation to any IPR Claim:
- 67.4.1 the Supplier shall have control of and be allowed to conduct all negotiations and proceedings;
 - 67.4.2 the Authority shall provide the Supplier with such reasonable assistance as is required by the Supplier, regarding the IPR Claim; and
 - 67.4.3 the Authority shall not without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), make any admission relating to the claim or attempt to settle it.
- 67.5 In relation to the settlement or agreement of any terms or any payment relating to any IPR Claim in respect of which the Authority exercises its rights of Crown Use, the Authority shall be entitled to take such steps as may be required to comply with Applicable Law, and the Supplier shall provide the Authority with such reasonable assistance as is required by the Authority, regarding such steps and the IPR Claim; and
- 67.6 The Authority shall indemnify the Supplier (and the Supplier Related Parties) in full against all Losses arising out of or in connection with any actual or alleged infringement of Third Party IPR which results from the use by the Supplier (or the Supplier Related Parties) of any Authority IPR (excluding any Authority Foreground

IPR) or Third Party IPR provided by the Authority to the Supplier or Supplier Related Party for the purposes of this Agreement (a "Supplier IPR Claim").

67.7 The indemnity in Clause 67.6 shall not apply in respect of any Supplier IPR Claim to the extent that it arises from:

67.7.1 the use of such Authority IPR or Third Party IPR by the Supplier or a Supplier Related Party otherwise than in accordance with the terms of this Agreement and any applicable licence or sub-licence conditions provided that these have been notified to the Supplier's Representative in writing; or

67.7.2 any modification or development carried out by or for the Supplier to any item supplied by the Authority under this Agreement, where such modification or development is not authorised or approved in writing by the Authority.

67.8 In relation to any Supplier IPR Claim under the provisions of Clause 67.6:

67.8.1 the Authority shall have control of and be allowed to conduct all negotiations and proceedings; and

67.8.2 the Supplier shall provide the Authority with such reasonable assistance as is required by the Authority regarding the Supplier IPR Claim; and

67.8.3 the Supplier shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any admission relating to the Supplier IPR Claim or attempt to settle it.

67.9 Subject to Clause 67.4 and Clause 67.8 (as applicable), each Party shall consult with the other Party in relation to any negotiations and proceedings relating to any IPR Claim or Supplier IPR Claim, acting reasonably, shall have regard to the reasonable views and comments of the other Party in relation to the conduct of such negotiations and proceedings.

68. FURTHER ASSURANCES

68.1 The Supplier undertakes to execute all documents and do all acts which may be necessary for the Authority to obtain the benefit of Clauses 61 (Cyber) to 67 (Supplier's IPR Indemnity), including consenting to the registration of any licence against any IPR which is registered.

68.2 The Supplier shall register all licences granted to it to use any registered Third Party IPR.

68.3 The Supplier shall, on request by the Authority, enter into negotiations to grant the Authority a licence of Supplier Background IPR or a sub-licence of Third Party IPR on fair and reasonable terms for use for any purpose not permitted by this Agreement.

68.4 The Supplier shall immediately notify the Authority in writing (which for this purpose does not include email) if it becomes aware of any actual, suspected or threatened infringement of, or other claim in relation to, the Authority IPR. The Authority shall decide what action, if any, to take and any award of costs or damages or other compensation payment recovered shall be for the account of the Authority. The Supplier shall (and shall procure that any Supplier Related Party shall) (at the Authority's cost) provide any assistance which the Authority requires in connection with any of these matters.

69. USE AND SHARING OF KNOW HOW

69.1 Subject to Clause 71 (Confidentiality), the Supplier shall (and shall procure that any Supplier Related Party shall), save to the extent prohibited by Applicable Law and any rights of or obligations to Third Parties (other than Supplier Related Parties and COI Associates), share information and know-how relating to the Agreement and the Services with the Authority and, as directed by the Authority, with Authority Related Parties (including suppliers and service providers of the Authority providing equivalent services in relation to any other areas of DE&S or the wider MOD) and other Third Parties.

70. DATA PROTECTION

70.1 The Parties acknowledge and agree that for the purposes of the Data Protection Legislation, the Parties will be considered Joint Controllers under this Agreement.

70.2 The Parties have each appointed a Data Protection Officer.

70.2.1 The contact details of the Authority's Data Protection Officer are: **[Insert Contact details]**

70.2.2 The contact details for the Supplier's Data Protection Officer are: **[Insert Contact details]**

70.3 The Parties agree that the **[Supplier/Authority]**:

- a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
- b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;

- d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- e) shall make available to Data Subjects the essence of this Joint Controller arrangement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Authority's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

70.3.1 Notwithstanding the terms of Clause 70.3, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

70.4 Undertakings of both Parties

70.4.1 The Supplier and the Authority each undertake that they shall:

- a) report to the other Party every [x] months on:
 - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or Third Parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or Third Parties on their behalf) to rectify, block or erase any Personal Data;
 - (iii) any other requests, complaints or communications from Data Subjects (or Third Parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
 - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - (v) any requests from any Third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Applicable Laws;

that it has received in relation to the subject matter of the Agreement during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 70.4.1 (a)(i) to (v); and
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in

Paragraphs 70.4.1 (a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.

- (d) not disclose or transfer the Personal Data to any Third Party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any Third Party, (save where such disclosure or transfer is specifically authorised under this Agreement or is required by Applicable Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful Processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Agreement.
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Commercially Confidential Information.
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data.
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Engaged Personnel who have access to the Personal Data and ensure that its Engaged Personnel:
 - (i) are aware of and comply with their duties under this Agreement and those in respect of Commercially Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any Third Party where the that Party would not be permitted to do so;
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.

- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds;
- (j) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;
- (k) where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as agreed with the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office and as set out in Annex 1 to Schedule S (Processing Personal Data) (as appropriate), as well as any additional measures;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- (l) where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of non-transferring Party has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the EU GDPR; or
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual

Clauses in the European Commission's decision 2021/914/EU set out in Annex 2 to Schedule S (Processing Personal Data) as well as any additional measures;

- (iii) the Data Subject has enforceable rights and effective legal remedies;
- (iv) the transferring Party complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
- (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.

70.4.2 Each Joint Controller shall use its reasonable endeavours to assist the other Data Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the other Joint Controller to breach any of its' obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

70.5 Data Protection Breach

70.5.1 Without prejudice to Paragraph 70.3 each Party shall notify the other Party promptly and without undue delay, and in any event within forty-eight (48) hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- (b) all reasonable assistance, including:
 - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach;

- (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;

70.5.2 providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 70.5.2. Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within forty-eight (48) hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

70.6 **Audit**

70.6.1 The Supplier shall permit:

- (a) the Authority, or a Third Party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Agreement and the Data Protection Legislation.
- (b) the Authority, or a Third Party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 of the UK GDPR by the Supplier so far as relevant to the Agreement, and procedures, including premises under the control of any Third Party appointed by the Supplier to assist in the provision of the Services.

70.6.2 The Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 70.6.1 in lieu of conducting such an audit, assessment or inspection.

70.7 Impact Assessments

70.7.1 The Parties shall:

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Agreement, in accordance with the terms of Article 30 of the UK GDPR.

70.8 ICO Guidance

70.8.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Authority may on not less than thirty (30) Business Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

70.9 Termination

70.9.1 If the Supplier is in breach under any of its obligations under this Clause 70 (Data Protection), a Supplier Event of Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier in accordance with Clause 52.3 Irremediable Breach.

70.10 Sub-Processing

70.10.1 In respect of any Processing of Personal Data performed by a Third Party on behalf of a Party, that Party shall:

- (a) carry out adequate due diligence on such Third Party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Agreement, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (b) ensure that a suitable agreement is in place with the Third Party as required under applicable Data Protection Legislation.

70.11 Data Retention

70.11.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

70.12 General

70.12.1 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the "UK Adequacy Decision"). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Agreement is not covered by the UK Adequacy Decision or at any time during the term of the Agreement the UK Adequacy Decision is withdrawn, invalidated, overruled or otherwise ceases to have effect, or amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Agreement,

Clauses 70.12.2 to 70.12.3 below shall apply.

70.12.2 The Parties agree:

- 70.12.2.1. that without any further action being required they have entered into the Standard Contractual clauses in the European Commission's decision 2021/914/EU in respect of data transfers by the Supplier outside of the EU to the UK;
- 70.12.2.2. that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
- 70.12.2.3. to use best endeavours to complete the Annexes to Schedule S (Processing Personal Data) to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
- 70.12.2.4. that if there is any conflict between this Agreement and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

70.12.3 In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:

- 70.12.3.1. that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in the Annexes to Schedule S (Processing Personal Data) and that such incorporation is not a change to this Agreement;
- 70.12.3.2. that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
- 70.12.3.3. to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- 70.12.3.4. that if there is any conflict between this Agreement and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

71. CONFIDENTIALITY

- 71.1 The Parties agree that provisions of this Agreement and each of the Associated Contracts shall, subject to Clause 71.2, not be treated as Commercially Confidential Information and may be disclosed without restriction.
- 71.2 Clause 71.1 shall not apply to any of those provisions of this Agreement, or to any information contained within an Associated Contract, which is designated as Commercially Sensitive Information. Any such provision of information shall, subject to Clause 75.1 (Supplier Right to Request Confidentiality), be kept confidential for the periods specified in Schedule G (Supplier's Commercially Sensitive Information) or otherwise agreed by the Parties.
- 71.3 Notwithstanding the provisions of Clause 71.1, each Party shall:
 - 71.3.1 treat all information it receives from the other Party under this Agreement or Associated Contracts or in connection with the provision of the Services as Commercially Confidential Information;

- 71.3.2 only disclose such information to those of the Supplier Related Parties or Authority Related Parties having a need to know for the purposes of this Agreement and the Services and the Associated Contracts;
 - 71.3.3 not copy any information otherwise than for the purposes of this Agreement; and
 - 71.3.4 not disclose any such information to Third Parties except as permitted under, and subject to the provisions of, Clause 23 (Conflicts of Interest) and Clause 74 (Disclosure).
- 71.4 The Supplier shall ensure that all Engaged Personnel are aware of the obligations set out in Clause 71.3 prior to receiving any information, and have complied with the terms of Schedule B (Schedule of Requirements) and Schedule H (Management of Engaged Personnel).
- 71.5 Upon expiry or termination of this Agreement for any reason, save to the extent permitted to be retained under this Agreement or required to be retained by Applicable Laws, the Supplier shall (and shall procure that each Supplier Related Party shall) destroy or return to the Authority all Authority Commercially Sensitive Information of the Authority or any Authority Related Party in its possession or control.
- 71.6 The provisions of this Clause 71 (Confidentiality) and Clause 74 (Disclosure) shall supersede and replace any other confidentiality undertakings agreed in writing between the Parties with respect of the subject matter of this Agreement prior to the date of this Agreement.

72. CONTROLLED INFORMATION

- 72.1 The Supplier shall, and shall procure that the Supplier Related Parties shall:
- 72.1.1 not use Controlled Information other than in connection with the provision of the Services;
 - 72.1.2 not copy the Controlled Information except as strictly necessary for the purpose of provision of the Services;
 - 72.1.3 not disclose the Controlled Information to any Third Party (other than any Engaged Personnel) without the prior written notice of the Authority;
 - 72.1.4 take all reasonable measures to protect the Controlled Information against unauthorised access and against loss; and
 - 72.1.5 take all reasonable measures to ensure that:

- a) Controlled Information is disclosed to Engaged Personnel only to the extent necessary for provision of the Services; and
- b) Engaged Personnel to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Clause 72 (Controlled Information).

72.2 Where Controlled Information is provided to the Supplier or to any Engaged Personnel, the Supplier shall:

- 72.2.1 maintain a register of that Controlled Information, which shall include a description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;
- 72.2.2 maintain this register for the duration of this Agreement and for two (2) years following the Expiry Date or Termination Date (as applicable);
- 72.2.3 make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Clause 72 (Controlled Information); and
- 72.2.4 upon expiry or termination of this Agreement for any reason, the Supplier shall (and shall procure that each Supplier Related Party shall):
 - a) return to the Authority all original and duplicate copies of the Controlled Information; or
 - b) at the Authority's request, destroy these copies and provide a certificate of destruction to the Authority.

72.3 The restrictions on the copying, use or disclosure in Clauses 72.1.1 to 72.1.3 (inclusive) shall not apply to Controlled Information to the extent that the Supplier can demonstrate that the information in question:

- 72.3.1 is already in, or comes into, the public domain otherwise than as a result of a breach of this Clause 72 (Controlled Information);
- 72.3.2 was already known to the Supplier (or where applicable, the Supplier Related Party), without restrictions on disclosure or use, prior to the Supplier (or where applicable, the Supplier Related Party) receiving it under or in connection with this Agreement; or
- 72.3.3 was lawfully provided by a Third Party without restriction on use or further disclosure.

73. LEGAL ADVICE

- 73.1 This Clause 73 (Legal Advice) is without prejudice to any duties of confidentiality or restrictions on disclosure pursuant to the Agreement, including under Clause 71 (Confidentiality), Part XII (Security) and Schedule F (COI Compliance Regime).
- 73.2 The Supplier shall ensure that the Privilege and Confidentiality Agreement is executed by all Engaged Personnel at the same time as the Letter of Placement and prior to starting work under the relevant Approved Tasking Order. A copy of each document shall be provided to the Authority.
- 73.3 The Supplier acknowledges and agrees that under the terms of the Privilege and Confidentiality Agreement the Engaged Personnel may not disclose to the Supplier any Legal Advice (as defined in that Privilege and Confidentiality Agreement), and the Supplier shall not request that any Engaged Personnel do so. The Supplier shall immediately return to the Authority (and delete from its computer systems and any electronic information retrieval system) any such Legal Advice that it receives, or in any way whatsoever obtains access to, which has not been made available to it directly by, or with the authorisation of, the Authority or any Authority Related Party (other than Engaged Personnel).

74. DISCLOSURE

- 74.1 The obligations set out under Clauses 71.2 (Confidentiality) and 71.3 (Confidentiality) not to release information to Third Parties shall not apply to:
- 74.1.1 any disclosure by the Authority of information comprising Authority Foreground IPR;
 - 74.1.2 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Agreement to the extent required for the performance of those obligations;
 - 74.1.3 any disclosure of information which a Party can demonstrate is already in, or comes into, the public domain otherwise than as a result of a breach of Clause 71 (Confidentiality);
 - 74.1.4 any disclosure to enable a determination to be made under Clause 57 (Dispute Resolution Procedure);
 - 74.1.5 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority (whether having the force of law or if not having the force of law) compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

- 74.1.6 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 74.1.7 any disclosure of information to the Parties' own professional advisers, insurance advisers or lenders;
- 74.1.8 any disclosure by the Authority of information as may be reasonably required:
- a) for the purpose of conducting a due diligence exercise, to any proposed supplier, its advisers and lenders, should the Authority decide to retender all or part of the Agreement or a replacement or continuation thereof or any part thereof;
 - b) in the course of carrying out its public functions;
 - c) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; or
 - d) for any other purpose in the exercise of the Authority's rights of disclosure and use set out under Clauses 62 (Ownership of Intellectual Property) to 69 (Use and Sharing of Know How);
- 74.1.9 any disclosure of information by the Authority to any Government Body or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Agreement;
- 74.1.10 any disclosure of information for the purpose of:
- a) the examination and certification of the Authority's or the Supplier's accounts;
 - b) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
 - c) without prejudice to the generality of Clause 74.1.5 compliance with the FOIA or the Environmental Information Regulations, provided that neither Clause 74.1.5 nor Clause 74.1.10(C) shall permit disclosure of Commercially Confidential Information that would not be disclosed in accordance with Clause 71.3 where that information is exempt from disclosure under section 41 of the FOIA or regulation 12 of the Environmental Information Regulations;
- 74.1.11 any disclosure of information by the Supplier to a Sub-contractor where the Sub-contractor has a need to know such information for the purpose of the relevant Sub-contract (but provided the Sub-contractor is under obligations of confidentiality no less onerous than those in this Agreement); or

- 74.1.12 any disclosure of information that was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Supplier Group or otherwise prohibited from disclosing the information to the Authority.
- 74.2 Where disclosure is permitted under the provisions of this Clause 74 (Disclosure) the Party disclosing the information shall procure that the recipient of the information shall be subject to obligations of confidentiality no less onerous than those contained in this Agreement. This obligation shall not however apply to disclosures of information made under the provisions of Clauses 74.1.3, 74.1.5, 74.1.6, 74.1.8(D), 74.1.10(B) and 74.1.10(C).
- 74.3 The Supplier shall not (and shall procure that the Supplier Related Parties shall not) make use of the Agreement or any Commercially Confidential Information issued or provided by or on behalf of the Authority in connection with the Agreement otherwise than for the purpose of the Agreement and the Services, except with the written consent of the Authority (or information that could be disclosed by the Supplier to Third Parties under the provisions of Clauses 74.1.3 or 74.1.6).
- 74.4 Where the Supplier, in carrying out its obligations under the Agreement, is provided with information by or on behalf of the Authority relating to any person, the Supplier shall not disclose or make use of any such information, otherwise than for the purpose for which it was provided, unless the Supplier has obtained the prior written consent of the Authority.
- 74.5 Where the Supplier, in carrying out its obligations under the Agreement, is provided with information by or on behalf of a Third Party relating to any person, the Supplier shall not disclose or make use of any such information, otherwise than for the purpose for which it was provided, unless the Supplier has obtained the prior written consent of the Third Party.
- 74.6 The Supplier shall not, and shall ensure that the Supplier Related Parties do not:
- 74.6.1 disclose or permit disclosure of any details of this Agreement to the news media or any Third Party other than Sub-contractors (and then only to the extent required in order to perform the relevant Sub-contract) or make any press announcements or publicise this Agreement or its contents in any way;
 - 74.6.2 use the Authority's name or brand in any promotion or marketing or announcement of orders; or
 - 74.6.3 disclose that the Authority is a customer or client of the Supplier;
- without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed).

74.7 The provisions of this Clause 74 (Disclosure), Clause 75 (Supplier Right to Request Confidentiality) and Clause 7 (Transparency) are without prejudice to the application of the Official Secrets Acts 1911 to 1989, Clause 23 (Conflicts of Interest), 58 (Security Measures) and Clause 70 (Data Protection).

75. SUPPLIER RIGHT TO REQUEST CONFIDENTIALITY

75.1 The Supplier may at any time request in writing, stating reasons, that the Authority keeps particular information confidential and does not disclose it to Third Parties. The Supplier may further request in writing at any time that, where the Authority discloses information pursuant to Clause 76 (Freedom of Information Act), the Authority make representations to the recipient of such information as to the desirability of keeping such information confidential. Any such request by the Supplier shall be accompanied by a document setting out in writing the requested representations. The Authority shall act reasonably when considering whether to make such representations.

76. FREEDOM OF INFORMATION ACT

76.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its information disclosure requirements pursuant to the same in the manner provided for in this Clause 76 (Freedom of Information Act).

76.2 Where the Authority receives a Request for Information (as defined in the FOIA) in relation to information that the Supplier is holding on its behalf and which the Authority does not hold itself, the Authority shall refer to the Supplier such Request for Information as soon as reasonably practicable and in any event within five (5) Business Days of receiving a Request for Information and the Supplier shall:

76.2.1 provide the Authority with a copy of all such information in the form that the Authority requires as soon as reasonably practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

76.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations (as applicable).

76.3 Following notification under Clause 76.2, and up until such time as the Supplier has provided the Authority with all the information specified in Clause 76.2.1, the Supplier may make representations to the Authority as to whether or not or on what basis information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested,

provided always that the Authority shall be responsible for determining at its absolute discretion:

- 76.3.1 whether information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
 - 76.3.2 whether information is to be disclosed in response to a Request for Information and in no event shall the Supplier respond directly, or allow any Sub-contractor to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.
- 76.4 The Supplier acknowledges that (notwithstanding the provisions of Clauses 71 (Confidentiality) to Clause 7 (Transparency) and this Clause 76 (Freedom of Information Act) the Authority shall act in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "Code").
- 76.5 When acting in accordance with the Code, the Authority may be obliged in certain circumstances under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or DE&S:
- 76.5.1 without consulting the Supplier; or
 - 76.5.2 following consultation with the Supplier (having taken its views into account).

PART XIII – INSURANCE AND LIABILITIES**77. INSURANCE**

- 77.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Agreement, the Supplier shall for the periods specified in Schedule K (Insurances) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Clause 77 and Schedule K (Insurances) and any other insurances as may be required by Applicable Laws, together the Contractor Insurances. The Supplier shall ensure that each of these Contractor Insurances are effective in each case not later than the date on which the relevant risk commences.
- 77.2 The Contractor Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 77.3 Where specified in Schedule K (Insurances) the Supplier 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 Supplier is legally liable in respect of this Agreement;
- 77.4 The Supplier shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this Agreement, including in circumstances where the Supplier is required to name the Authority on any such insurance policies to protect the Authority’s separate interests.
- 77.5 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 77.6 The Authority may elect (but shall not be obliged) where notice has been provided to the Supplier to purchase any insurance which the Supplier is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.
- 77.7 The Supplier shall from the date of this Agreement and within fifteen (15) Business Days after the renewal of each of the Contractor Insurances, provide evidence, in a form satisfactory to the Authority, that the Contractor Insurances are in full force and effect and meet in full the requirements of this Clause 77 and Schedule K (Insurances). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of its liabilities and obligations under this Agreement.

- 77.8 The Supplier shall notify the Authority in writing at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Contractor Insurances. This Clause 77.8 shall not apply where the termination of any Contractor Insurances occurs purely as a result of a change of insurer in respect of any of the Contractor Insurances required to be taken out and maintained in accordance with this Clause 77 .
- 77.9 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, this Agreement for which it may be entitled to claim under any of the Contractor Insurances. In the event that the Authority receives a claim relating to this Agreement, the Authority shall co-operate with the Supplier and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 77.10 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Business Days after any insurance claim in excess of one hundred thousand pounds £100,000 relating to this Agreement on any of the Contractor Insurances or which, but for the application of the applicable policy excess, would be made on any of the Contractor Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 77.11 Where any Contractor Insurance requires payment of a premium, the Supplier shall be liable for such premium.
- 77.12 Where any insurance referred to in this Clause 77 and Schedule K (Insurances) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

78. LIABILITY

78.1 UNLIMITED LIABILITIES

78.1.1 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
- d) 1979 or section 2 of the Supply of Goods and Services Act 1982; or

e) any liability to the extent it cannot be limited or excluded by law.

78.2 The financial caps on liability set out in Clauses 78.4 and 78.4 below shall not apply to the following:

- a) for any indemnity given by the Supplier to the Authority under this Agreement;
- b) for any indemnity given by the Authority to the Supplier under this Agreement;
- c) breach by the Supplier of Clause 70 (Data Protection) and Data Protection Legislation; and
- d) to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

78.3 Financial limits

78.3.1 Subject to Clauses 78.1 and 78.3 and to the maximum extent permitted by Applicable Laws:

- a) the Supplier's total liability in respect of losses that are caused by Defaults of the Supplier shall in no event exceed:
 - i. in respect of Clause 39 [Supplier's Personnel at Governments Establishments] [two million pounds] (£2M) in aggregate;
 - ii. in respect of any termination resulting from a Supplier Event of Default [six million pounds] (£6M) in aggregate;

78.3.2 without limiting Clause 75.3.1 and subject always to Clauses 78.1, 78.2 and 78.3.3, the Supplier's total liability throughout the Term in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Agreement shall be [two million pounds] (£2M) in aggregate;

78.3.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Supplier's total liability (in aggregate) set out in Clauses 78.3.1 and 78.3.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 78.3.1 and 78.3.2 of this Agreement.

78.4 Subject to Clauses 78.1, 78.2 and 78.5, and to the maximum extent permitted by Applicable Laws 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 Agreement shall in respect of all liabilities (taken together) be

limited to the Fees paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

78.5 Clause 78.4 shall not exclude or limit the Supplier's right under this Agreement to claim for the Fees.

78.6 Consequential loss

78.6.1 Subject to Clauses 78.1, 78.2 and 78.7, 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.

78.7 The provisions of Clause 78.6 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

78.7.1 any additional operational and administrative costs and expenses arising from the Supplier's Default, including any costs paid or payable by the Authority:

- a) to any Third Party;
- b) for putting in place workarounds for the Supplier Deliverables and other deliverables that are reliant on the Supplier Deliverables; and
- c) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

78.7.2 any or all wasted expenditure and losses incurred by the Authority arising from the Supplier's Default, including wasted management time;

- 78.7.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, reprourement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Fees that would have been payable for the relevant Supplier Deliverables);
- 78.7.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- 78.7.5 damage to the Authority's physical property and tangible assets;
- 78.7.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any Third Party Intellectual Property Rights or breach of any obligations of confidence;
- 78.7.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a Third Party (including any compensation or interest paid to a Third Party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- 78.7.8 any fine or penalty incurred by the Authority pursuant to Applicable Laws and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 78.7.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Supplier pursuant to this Agreement.

78.8 **Invalidity**

- 78.8.1 If any limitation or provision contained or expressly referred to in this Clause 75 (Supplier Right To Request Confidentiality) is held to be invalid under any Applicable Laws, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 78 (Liability).

78.9 **Third party claims or losses**

- 78.9.1 Without prejudice to any other rights or remedies the Authority may have under this Agreement (including but not limited to any indemnity claim under Clauses 67 (Supplier's IPR Indemnity) and 68 (Further Assurances) or under any Applicable Laws), the Authority shall be entitled to make a claim under

this Agreement against the Supplier in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a Third Party under any contract with that Third Party provided that such Third Party claim:

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

78.10 **No double recovery**

78.10.1 . 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.

79. **PLASTIC PACKAGING TAX**

- 79.1 The Supplier shall ensure that any Plastic Packaging Tax (PPT) due in relation to this Agreement is paid in accordance with the PPT Legislation.
- 79.2 The Fees includes any PPT that may be payable by the Supplier in relation to the Agreement.
- 79.3 On reasonable notice being provided by the Authority, the Supplier shall provide and make available to the Authority details of any PPT they have paid that relates to the Agreement.
- 79.4 The Supplier shall notify the Authority, in writing, in the event that there is any adjustment required to the Fees in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Supplier shall provide any such information that the Authority requires in relation to any such adjustment.
- 79.5 In accordance with Clause 35.2 (Retention of Records) the Supplier (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 Agreement.
- 79.6 Where the Supplier manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Agreement the Supplier 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 Supplier has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Supplier providing:

- 79.6.1 confirmation of the tax status of any Plastic Packaging Component;
 - 79.6.2 documents to confirm that PPT has been properly accounted for;
 - 79.6.3 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
 - 79.6.4 copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
- 79.7 The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Supplier, to ensure any information that has been provided in accordance with Clause 79.6 above is accurate.
- 79.8 In the event the Supplier 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.
- 79.9 The Supplier shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Supplier for the Authority to comply with any obligations it may have under the PPT Legislation.

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

SIGNED

for and on behalf of **THE SECRETARY OF STATE FOR DEFENCE**

Name of signatory:

Title of signatory:

In the presence of:

Signature of witness:

Name of witness:

Address of witness:

SIGNED by the SUPPLIERS

for and on behalf of **JACOBS (UK) LIMITED**

Name of signatory:

Title of signatory:

for and on behalf of **TURNER AND TOWNSEND PROJECT MANAGEMENT LIMITED**

Name of signatory:

Title of signatory: